

**CONFLICT, LAW AND GOVERNANCE:  
The Case of Tenure Conversion in New Delhi**

by

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Bachelor of Architecture  
Maharaja Sayaji Rao University of Baroda, 1988

Submitted to the  
Department of Urban Studies and Planning  
in partial fulfillment of the requirements for the degrees of

Master in City Planning  
and  
Master of Science in Architecture Studies

at the  
Massachusetts Institute of Technology  
February 1994

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**ABSTRACT**

This thesis examines the failure of a tenure conversion scheme introduced by the government in New Delhi. The government introduced a leasehold to freehold conversion scheme in response to a long standing demand from leasehold residents, and to its own perception of the ineffectiveness of leasehold restrictions. The story of the failure of the conversion scheme reveals counter-intuitive responses from residents. Though residents had long demanded freehold conversion, when the scheme was finally introduced, few residents opted for conversion. Further, even though residents chose not to convert to freehold ownership, they actively lobbied for an indefinite extension of the government's deadline for conversion. This thesis attempts to understand the apparently contradictory behavior of the residents in their response to the government's conversion scheme.



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## LIST OF ACRONYMS USED

BJP	Bharatiya Janata Party
DDA	Delhi Development Authority
EWS	Economically Weaker Sections
HIG	Higher Income Group
HUDCO	Housing and Urban Development Corporation
L&DO	Land and Development Office
LIG	Lower Income Group
MUD	Ministry of Urban Development
SFS	Self Financing Scheme



## INTRODUCTION

In response to demand from residents in New Delhi, and its own perception of the ineffectiveness of the residential leasehold system, the Indian Government decided to introduce a leasehold to freehold conversion scheme. Residents had been actively demanding the conversion option as early as the Sixties, and the promise of allowing conversion had become a staple element of the manifestos of successive governments since the late Seventies. However, when the scheme was finally introduced in 1992, few residents chose to convert to freehold tenure. This thesis tells the story of the leasehold to freehold conversion scheme and attempts to understand the reasons for its failure.

The Indian government distributed residential land to private individuals on leasehold tenure in New Delhi to achieve housing affordability and to enable control over land development.<sup>1</sup> A key objective of the leasehold system was to control housing price escalation resulting from speculative investment in the property market. The government imposed two kinds of restrictions on the transfer of leasehold rights. The first restriction prohibited sales transfers of leasehold housing for an initial period of ten years following allotment. The second reduced returns from sales transfers after that period. The first restriction attempted to prevent the transfer of subsidized housing to ineligible groups, while the second attempted to reduce speculation by reducing returns from investment in the property market.

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<sup>1</sup>Leasehold tenure involves a contractual relationship between lessor and lessee, where the lessor owns the land, while the lessee owns the building and exercises land use rights. The lease contract between lessor and lessee constrains lessees by limitations on land use, and on the transfer of property.

Lessees, however, found ways to get around restrictions on sales transfers, and make irregular transactions freely. Nearly all transfers of leasehold property take place through a modified legal document known as the power of attorney. The power of attorney transfer is not recognized as a legal sales transfer by lease administration and does not give the buyer legal title to property. Lessees claimed that they were forced to use the power of attorney because of unreasonable restrictions on transfer. As the power of attorney did not give them legal title, residents claimed that their freedom to invest in their property was hampered. Lessees also claimed that lease restrictions on land use and its interpretation by the lease administration caused them unnecessary harassment as they overlapped creating "dual control" with the building regulations administered by the two municipal corporations of the city. Leasehold residents therefore demanded that the government convert the city's extensive residential leaseholds to freehold tenure.<sup>2</sup>

Subject to increasing political pressure, successive governments beginning in the early Seventies, pushed Delhi's urban administration to reassess the performance of the residential leasehold system. The "leasehold to freehold" issue became a recurring feature in party manifestos for city elections. In February 1992, the government announced a scheme to enable lessees to convert their property to freehold ownership, conceding to the long standing demand from residents. However, by July 1993, only 7.3% of eligible leasehold residents had filed applications for tenure conversion.

Given the clamour for freehold conversion, the small percentage of residents who actually chose to convert to freehold ownership is surprising. Why did residents not convert, given their demand for freehold ownership? I attempt to understand this question through interviews with leasehold residents,

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<sup>2</sup>Freehold tenure involves right to use and benefit from property, constrained by limitations on use and density. The limitations are usually regulated by a building control act. Taxation on sales transactions are common, and usually takes the form of a capital gains tax. The "unearned increase" component required under leasehold tenure, however, is not applicable, nor can restrictions on resale be imposed.

government officials, independent observers, and intermediaries involved in the leasehold sub-market.

The structure of this thesis is as follows: Chapter 1 describes the institutional and historical context of the residential leasehold in New Delhi, and the reasons for its introduction. Arguments by residents demanding freehold conversion and the government's response to this demand are also introduced.

Chapter 2 describes the leasehold to freehold conversion scheme introduced by the government and residents' responses to the scheme. The government permits freehold conversion only with the payment of a one-time conversion charge. Both residents and independent analysts suggest that the charge is too high, and that this is the reason for the failure of the conversion scheme. I outline the dispute over the conversion charge and show that the government's determination of the conversion charge does not fully explain the low response to the conversion scheme.

In Chapter 3, I examine why residents did not convert to freehold tenure. I identify three primary reasons why residents did not convert. In the Conclusion, I present recommendations that are suggested by an understanding of the reasons for the residents' lack of interest in freehold conversion. The Epilogue presents a theory about law and conflict that builds from an analysis of the conflicts over property in the residential leasehold of New Delhi.

## Chapter 1

### LEASE RESTRICTIONS IN NEW DELHI

The Indian government introduced the leasehold system in New Delhi to control land prices and housing cost, and to ensure public sector control over land and housing delivery. The continued growth of population in urban centers in India has resulted in severe shortfalls in urban housing.<sup>3</sup> The growth in population has been greatest in the largest cities. New Delhi's population doubled over a ten-year span from 700,000 in 1941 to over 1.4 million in 1951 (Ribiero, 1988). By 1961, the city's urban population had risen to 2.3 million. The housing shortage at that time was assessed at 155,726 units (Maitra, 1991). The supply of housing did not uniformly respond to demand. In 1961, the Indian Census estimated that around 65 percent of households in Delhi lived in one-room houses, while the richest 7 percent lived in large houses. Informal housing stood at 78,346 in 1961, having increased from 12,749 units in 1951.

The Indian government's response to the increasing and imbalanced demand for housing in New Delhi was characterized by three distinct approaches to land development (Bose, 1968). In the first period (1947-55), following India's independence and its partition in 1947, the government focused largely on immediate measures to house refugees from former Indian territory. The Ministry of Rehabilitation and Resettlement was specially set up by the Indian government to build housing for the large influx of Hindu refugees from

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<sup>3</sup>Present trends of urbanization indicate that housing will continue to be a major problem in urban centers. India's urban population is expected to rise to 300 million by 2001: a ten-fold increase this century (Ribiero, 1988).

newly formed Pakistan during this period. The second period (1955-59) was characterized by a rapid population increase in Delhi, accompanying major economic growth. The rising demand for housing was largely met by private developers during this period. During the third period (1959 onwards), the government introduced the "Scheme for the Large Scale Acquisition Development and Disposal of Land" in 1961, and imposed restrictions on private development.

By the end of the Fifties, the still underdeveloped private sector had failed to satisfy the demand for housing. Maitra (1991), notes that only one major private development agency had operated in New Delhi from 1947 to 1963. During this period, this single agency accommodated a total of 13,063 households on 1,547.1 acres of developed residential land. At 934 plots a year, the rate of development was slow when contrasted with the housing shortfall in 1960 of 155,726.<sup>4</sup> This developer's market included only the richest 7 percent of New Delhi's population. Moreover, with supply skewed towards the wealthy, a bulk of the demand remained unsatisfied.

The government set up the Birla Committee in 1954 to address the mismatch of supply and demand for housing. The Committee identified the haphazard development of the city, with its resulting inadequate supply of land for housing development, as the primary reason for this mismatch. The Committee also noted that the previous governance of the city under the Delhi Improvement Trust had failed because it had neither undertaken a civic survey nor prepared a Master Plan for growth.<sup>5</sup> As a result, the Committee reported, "... (the) city grew haphazardly ... and land passed into the hands of speculators." The Committee recommended an integrated urban land policy as a remedy to the city's uncontrolled development. The Delhi

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<sup>4</sup>Plots developed by this agency during this period were large, with an average holding measuring 600 square yards (Maitra, 1991).

<sup>5</sup>Ribiero (1988), refers to A.P. Hume's one-man committee report of 1936 as a first reference to the rapid growth of the city, following its designation as India's capital in 1911, in terms of the "congestion of people in houses and of houses on land". The Delhi Improvement Trust was set up by the British in 1937, to "execute schemes for ameliorating living conditions". Government land, known as "Nazul" land, was placed under the control of the Trust to further this intention.

Development Act of 1957 was a first attempt by the Indian government to introduce this integrated policy. The Act of 1957 set up a single planning and controlling authority known as the Delhi Development Authority (DDA), to exercise executive control over Delhi's urban development. The "Scheme for the Large Scale Acquisition, Development and Disposal of Land", introduced by the government in 1961, laid the ground for government control over urban development.

The Scheme of 1961 had three broad objectives. The first objective was to ensure that increases in the value of land through the provision of infrastructure and its conversion to urban use, would accrue to public benefit. The second objective was to enable the city to develop in an "orderly" and planned manner by ensuring public control over peripheral land. The third objective was to achieve an equitable distribution of housing by public sector land delivery (Negi, 1990). Land acquired by the administration under the Scheme of 1961 was transferred to the DDA, which then subdivided and distributed serviced land on leasehold tenure to private individuals and institutions.

The government's shift to a new focus on public sector housing development with restrictions on the operation of private developers in the city was also heralded by the Scheme of 1961. This reflected a view that private investment in the real estate market was motivated by speculation. Speculators rely on supply scarcities created by withholding land from the market to maximize profits. The government felt therefore, that private development would not address housing shortfalls at an adequate rate (Ribiero, 1988). Speculative investment in the housing market was also related to unaffordability of housing. Some urban economists have argued that the land price increases could be attributed to speculative withholding of land from the market. Kumar (1989), for example, attributes rapid price increases for housing in New Delhi to returns for speculative investment in land being significantly higher than in the more "legitimate" share market.<sup>6</sup> The government

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<sup>6</sup>Returns from investment in the real estate market over a thirty year period ending in the mid-eighties was calculated at between 25% and 35%. Returns from the stock market were significantly lower during the same period (Kumar, 1993).



attempted to make such speculation less profitable by introducing lease restrictions on sales transfers.

In New Delhi, two leasehold restrictions were framed to control speculative investment in public sector developed housing. The first prohibited all transfers of leasehold rights for a period of ten years after initial allotment. The second required that 50% of the unearned increase in value on property sales after the initial ten-year holding period be returned as a capital gains tax. Recognizing that property sales tended to be under-reported, the unearned increase was determined by fixed rates corresponding to the city's geographical quadrants, and particular housing types. The resulting reduction in returns from property transactions through leasehold restrictions was expected to control speculation in the housing market.

Leasehold tenure was first introduced in Delhi with Lutyens' plan for the new capital of New Delhi in 1911. The Report of the Committee on Administration of Land in Delhi (1977) notes that from 1911 to 1950, the government administered land that was partly leasehold and partly freehold. From 1950 onwards, the government chose to distribute land largely on leasehold tenure. A Cabinet Committee set up in 1960 recommended in its report of 1961 that all land acquired by the government in Delhi be distributed only on leasehold tenure. All land acquired under the Scheme of 1961, therefore, was disposed of in the form of 99-year perpetual leases (Ribiero, 1988).

The government distributed land on leasehold tenure for three purposes. The first purpose was to ensure control over land use after the distribution of land to private individuals. Building controls were built into the lease contract. These building regulations were first introduced with the leases of 1911, at a time when no other regulations on built form were in place. The second was to generate a continuing revenue stream to the government through the collection of lease (ground) rent on a bi-annual basis. A provision for the periodic re-evaluation of lease rents was included in the lease contract to reflect changes in land value. The third purpose was to collect a major portion of land value increment generated by public infrastructural

investment, termed "unearned increase".<sup>7</sup> This part of unearned increase was to be collected at the time of transfer of leasehold rights.

### **The Case for Freehold Conversion**

Though the government on one hand wanted to restrict sales transfers of property to prevent speculation in the housing market, on the other it attempted to encourage investment in housing by providing a quasi-permanent character to leasehold tenure to ensure a perception of tenure security. Policy makers in Delhi, were concerned that public ownership of land not restrict private investment in housing. The distribution of land on a leasehold basis was justified as being the nearest to freehold ownership in that it provided "adequate incentive for the lessee to invest in housing" (Ribiero, 1988). Leasehold conditions allowed private individuals to retain 50% of unearned increase in property value from sales transfers. Leases were granted in perpetuity and the descendants of original lessees were by contract given the option to renew the 99-year lease on its lapse. (Ribiero, 1988).

Land values, however, continued to rise rapidly for the land market of Delhi as a whole after 1961. Kumar (1989) notes that land prices in the mid-eighties for Central Delhi were 200 times higher relative to 1960, while prices for South Delhi rose a thousand times. The wholesale price index, in contrast, increased only by a factor of 5 during that same period. Real incomes also grew at a much slower rate than formal housing cost. Housing had ironically

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<sup>7</sup>One justification for the leasehold system is that value in land is created by state intervention through infrastructure provision (Archer, 1973). According to this view, the largest component of increase in the value of private property then ensues not from the actions of the private individual, but as a result of externalities generated by the actions of the state. The state, if empowered to reclaim a proportion of the unearned increase in land value, can continue to finance the development of infrastructure. Other forms of taxation such as the capital gains tax and the betterment levy allow the collection of such unearned increase in land value. However, public ownership of land offers the ability to reallocate that scarce resource to increase the access of the poor to housing.

become more unaffordable in the years following the implementation of the integrated land policy.<sup>8</sup>

MUD officials and the press attributed a large part of housing price escalation to the failure of leasehold restrictions to control speculative transfers. Irregular sales transfers of subsidized leasehold housing were high, indicating that lease restrictions on transfer were largely ineffective.<sup>9</sup> As mentioned earlier, these sales transfers were made through the use of a semi-legal mechanism known as the power of attorney. One of two instruments that comprises the power of attorney is the General Power of Attorney. This instrument is a legal document that designates a representative selected by an owner of any form of property to act on his or her behalf. The second instrument used in the power of attorney transfer is a document known as the Sales Agreement. The precise working of the power of attorney transaction is explained in Chapter 3. At this point we need only be concerned with the outcomes of one primary aspect of this irregular process of transfer. In the power of attorney transaction of leasehold property, the title deed remains in the name of the original lessee, as the government does not recognize the transfer of leasehold rights as legal. The power of attorney transfer then, does not constitute a legal sales transfer, and as a result does not invite the registration charges and stamp duties associated with legal sales transfers. The avoidance of these charges represents a major loss of revenue for the urban administration.

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<sup>8</sup>Recent findings indicate however, that the cost of housing in leasehold areas did not escalate as rapidly as in comparable freehold areas in New Delhi. Data generated by primary surveys by Negi (1991), and Mehra (1990), reveal price differentials ranging from 30% to 60% between comparable residential leasehold and freehold property in New Delhi. Further research is required before the nature of these price differentials across the two sub-markets is conclusively established. Capozza and Sick (1991), refer to similar price differentials for comparable leasehold and freehold residential property in Vancouver, Canada.

<sup>9</sup>One survey of two schemes intended for the Economically Weaker Sections (EWS), revealed that 38% of housing units in one were transferred from the beneficiaries of subsidized housing allotments to ineligible buyers over an eight-year span. In another, 30.4% of these housing allotments were transferred over a thirteen-year period (Selvasundar, 1989).

Power of attorney transactions became the rule, and nearly all transfers of leasehold property were made through this mechanism.<sup>10</sup> Residents claimed that lessees were forced to use the shelter of the power of attorney because of the imposition of unrealistic restrictions on transfer.<sup>11</sup> Those residents who had acquired leasehold property through the power of attorney found access to mortgages and bank loans using property as security difficult, as they had no formal title to their property. As a result, they said their ability to invest in housing was hampered.

With the subsequent setting up of the Municipal Corporations and the introduction of the Building Code, lease regulations on built form overlapped with the new Building Code. This overlap created some ambiguity as a result of differences in interpretation by the lease administration and the municipal corporations.<sup>12</sup> As a result of the administrative overlap, extensions to leasehold property required permission not only from the lease administering body, but also from the municipal corporation. Permits for even minor additions take up to a year for the lease administration to process. Lessees also need to obtain clearance from the local municipal corporation for the same additions. They claimed that the "dual control" by lease administration and the municipal corporations was not only an unnecessary overlap of administrative responsibility, but also caused a great deal of

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<sup>10</sup>An editorial in the Times of India (3/13/91), notes, "Allowing conversion into freehold is, in truth, merely accepting the reality. Leasehold land makes sense only if the state has the will and the werewithal rigidly to control the parameters within which urban conglomerates develop. With demand outstripping supply, and the municipal authorities unwilling to police the land, virtually every single land law has been stood on its head. Leasehold land cannot be sold with full legal sanctity but sales on power-of-attorney have become perfectly acceptable."

<sup>11</sup>An editorial in the Patriot (2/17/92) referring to the use of power of attorney to transfer property notes, "... a person is often forced to sell off his property under various compulsions and indirect methods were resorted to because the conditions attached to dwelling units were unacceptable or impractical."

<sup>12</sup>Delhi is administered by two municipal corporations, the Municipal Corporation of Delhi (MCD), which provides services to Old and Central Delhi. The New Delhi Municipal Corporation (NDMC) administers the rest of New Delhi.

inconvenience and confusion to residents.<sup>13</sup> They also claimed that the numerous lease restrictions exposed them to demands from "rent-seeking" lease administration officials.<sup>14</sup> Lessees therefore demanded that the government convert the leasehold system to a freehold ownership system.

Subject to increasing political pressure, successive governments pushed Delhi's urban administration to evaluate the performance of the residential leasehold system (Editorial, Times of India, 3/13/91). The Committee on Administration of Land in Delhi was set up in 1977 to "examine the working of the leasehold system ... [and] ... the feasibility of converting the leasehold system to freehold" (Government of India, 1977: ii).

The Committee notes in the introduction to its report:

The Government of India has often been pressed to convert the leasehold system on Government owned land in Delhi/New Delhi to a freehold system. In recent times citizen dissatisfaction over the multiplicity of authorities dealing with land and its administration, including the administration of leases granted by Government from time to time, has also been rather vocal. (Government of India, 1977: 1).

The Committee goes on to add:

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<sup>13</sup>A government document of 1977 quotes an earlier government missive which supports the lessees' position. It notes, "Being couched in legal terms, as the leases are, they are capable of different interpretations leading to a lot of confusion. Besides the leases provide for approval of the lessor to the construction whereas legitimately speaking this is the function of the local body" (Government of India, 1977: 4). The lease contract reserves lease administration's right to terminate the contract for any infringement of its terms. This termination of the contract by lease administration is referred to as lease "determination".

<sup>14</sup>In apparent concurrence with this criticism, a government document notes, "The leasehold system causes a great deal of harassment and inconvenience to the lessees largely stemming not from the system, but from the administration of it." (Government of India, 1977: 5). A further reference in the same document is more direct, "One [reason for dissatisfaction with the leasehold system] relates to the annoyance generated by inefficient official procedures, which necessitate repeated visits to Government Offices, frequent payments, explanations for petty infringements, and perhaps the satisfaction of illegitimate or corrupt demands." (Government of India, 1977: 5).

There is at present a great deal of dissatisfaction with the leasehold system in Delhi. There are several reasons for this. One relates to the annoyance generated by inefficient official procedures, which necessitates repeated visits to Government Offices, frequent payments, explanations for petty infringements, and perhaps the satisfaction of illegitimate or corrupt demands. Another arises out of the reluctance of lessees to let their lease rents rise as time passes and leases become due for reassessment, particularly if such rises have a suspicion of arbitrariness. A third cause of resentment is the failure of the leasehold system in Delhi to provide any restraint on land prices or on speculation in land, as had been expected of it. (Government of India, 1977: 9)

The Committee however recommended that the leasehold system be retained, observing that it still demonstrated three distinct advantages over the freehold system. The first advantage was greater control over land use through lease regulations. The second was the revenue earned as unearned increase and ground rent, which was used to finance further urban development. The third was its use to increase housing affordability to the poor.<sup>15</sup> The Committee noted that there was need for caution in making a decision to dismantle the leasehold system, for while the leasehold system could be dismantled at any time, reversing such a decision would be difficult for administrative and political reasons.

The Committee's recommendation appears to have been ignored, for in that same year, Prime Minister Morarji Desai's Janata government announced its

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<sup>15</sup>In favor of the leasehold system, the Committee cited first, its use to control land use as a factor justifying its retention, as the "leasehold system offers an authority interested in the observance of a land use regulation an additional weapon, and a fairly potent one, to combat violations" (Government of India, 1977: 11). It identified as a second advantage the "opportunity it offers the community to share in the value of land over time" through the collection of unearned increase. In addition, the recurring income to Government by way of ground rent, additional ground rent, periodical revision of ground rent and charges recovered for regularization of breaches of the terms of leases, was "revenue the Government could ill-afford to forego" (Government of India, 1977: 12-13). Total revenue from such charges collected during 1977, for instance, by the Land and Development Office, was Rs. 40.378 million against an expenditure of Rs. 2.287 million (Source: L&DO Records).

decision to convert New Delhi's residential leasehold land to freehold tenure.<sup>16</sup> No attempt was made however, to implement the policy by this government or the succeeding Congress-I governments under Prime Ministers Indira Gandhi or Rajiv Gandhi. In 1989, the Rajiv Gandhi Government raised the conversion issue again, but the policy remained unimplemented. An article in the Indian Express (12/6/87) notes, "Conversion of leasehold land to freehold land was one of the promises held out in the Congress-I manifesto. 'In fact that is a promise held out in every election', an official said. But it has so far been a case of political push being resisted by administrative pressure."

In 1991, the Janata government under Prime Minister Chandrasekhar introduced a scheme for the conversion of residential leaseholds to freehold. However, an official notification was not issued, and the scheme remained unimplemented. The short-lived Chandrasekhar government was soon replaced by a Congress government in the same year.

The Times of India (1/11/92), reports a meeting between the Union Minister of Urban Development and a delegation from the Bharatiya Janata Party (BJP), the government's major political opposition in Delhi. The BJP members reminded the minister of her party's electoral promise that the leasehold system would be abolished by January 1992. The delegation was quoted as saying that a consultative committee set up to discuss the issue had been assured that the dismantling of the leasehold system would be the government's "new year gift" to the people of Delhi. However, the delegation noted, no official announcement had yet been made.

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<sup>16</sup>Agrawal (1994), notes that the Minister of State for Urban Development, Sikhandar Bakht, announced the government's intention in Parliament in that year.

## Chapter 2

### THE LEASEHOLD TO FREEHOLD CONVERSION SCHEME

On February 15, 1991, the Congress government under Narasimha Rao, announced its decision to offer freehold conversion to residents of leasehold property with the payment of a one-time conversion charge. This time, an official notification was issued, confirming the government's decision to phase out the residential leasehold system. Three factors were cited by the government as prompting the decision to allow freehold conversion. First, the uncontrolled spiraling of housing prices indicated a failure of its land management strategy. Second, the costs of maintaining leasehold accounts exceeded the revenue earned as rent. MUD officials noted that the costs of maintaining lease administration exceeded returns from ground rents.<sup>17</sup> The widespread use of the power of attorney to effect property transactions represented further revenue losses as a result of the avoidance of unearned increase, and registration charges and stamp duties. And third, housing investment was said to have suffered as a result of fears regarding tenure security.

The conversion scheme was expected to achieve three objectives. First, to eliminate wasteful effort in collecting small amounts of ground rent from a large number of lessees on a bi-annual basis, as costs outstrip recovery. Second, the regulatory authority invested in DDA and L&DO by the lease

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<sup>17</sup>The Indian Express (12/6/87) reports, "One of the factors taken into account in reviewing the leasehold system has been the cost of maintaining offices to keep lease accounts and records. 'The cost wipes out much of the benefit', an official said". MUD's Land and Development Office (L&DO), for example, recovered 35.7% of ground rent due in 1987, and only 23.2% in 1988 (Source: L&DO Records).



contract created an overlap of control with that of the municipal corporations, therefore, DDA and L&DO were to be divested of these regulatory duties to allow them to function in their new role of "a facilitator and developer of infrastructure for future development". Third, to augment revenue to the DDA to enable the purchase and development of land stock to meet future needs (The Economic Times, 3/14/93).

A Ministry of Urban Development notification stated that conversion to freehold tenure devolved additional rights from the property rights bundle to private individuals. Lessees therefore, were expected to pay for the additional rights. Freehold conversion was to be allowed on the payment of a conversion charge, fixed according to sectoral location (zone), and housing type.<sup>18</sup> By allowing the conversion of leasehold property to freehold tenure, the government gives up the right to collect "unearned increase" from future property transactions. The conversion charge, was intended to partly compensate the urban administration for the potential loss of revenue as a result of conversion to freehold tenure. MUD estimated that revenue from conversions would total Rs. 6 billion (US\$ 200 million).<sup>19</sup> The government announced that this revenue would be directed to a revolving fund that would be used to acquire and develop land, with the focus this time around, on private sector housing development.<sup>20</sup>

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<sup>18</sup>For example, conversion charges were fixed at Rs. 30,000 (roughly US\$ 1,000) for plots sized 150 sq. yds. Lessees were given the option of staggering payment over 5 years, at an interest rate compounded at 12% p.a. The Hindustan Times (2/17/92) reports, " ... the conversion charges are fixed on an incremental basis on the lines of the income-tax formula (this presumably means that the charges are progressive -- parentheses are mine), with the variations in land value reflected in the zone-wise categorization of the various types of flats and houses in Delhi. The Urban Development Minister Mrs. Sheila Kaul has done well to clarify that the conversion charges have been computed on the basis of the notified land rates obtaining in 1987-88 and not the enhanced rates announced subsequently."

<sup>19</sup>1 US\$ = Rupees (Rs.) 31.13, as of 12/30/93 (Source: The New York Times).

<sup>20</sup>The government felt that the DDA, in attempting to fulfill its role as the major developer of housing, had found itself unequal to the task. The DDA had continued to fall behind in its allotment targets over the years since 1961 (Howland, 1975, notes that according to MUD guidelines, one-fifth of total DDA-built housing was to be supplied to the Higher Income Group (HIG) so that the Lower Income Group (LIG) could be cross-subsidized. However, subsequent assessments revealed that land allotment skewed heavily toward the upper half of the

Government officials felt that freehold conversion was a necessary prerequisite to achieve this private sector oriented strategy. Officials noted that shortfalls in total housing had caused the rapid escalation in housing cost in Delhi. These supply shortfalls, they said, had resulted from excessive public sector involvement in housing delivery, and from restrictions on the operation of private developers. Leasehold restrictions had distorted the operation of the housing market, they claimed, and their removal would promote increased housing development by increasing the fluidity of the land market. A New Delhi newspaper, the "Hindustan Times", notes in an editorial titled "From lease set free":

The government should be congratulated for the overdue reform, which recognizes not only the failure of the leasehold system to curb speculation and ease the housing shortage but the need to tailor the structure of ownership to suit the requirements of the growing metropolis, where the accent has shifted from official to private and cooperative efforts. (Hindustan Times, 2/17/92)

Given this logic, and the demand from residents, the government and other observers expected a flood of applicants with the announcement of the scheme.<sup>21</sup>

The first deadline set by the government notification of 2/15/92 for the filing of applications for freehold conversion was March 31, 1992. In July, 1992, the "Patriot", a New Delhi-based newspaper reported that the DDA had sold 22,000 application forms, but received only 1100 completed applications from a total eligible population of 200,000. The L&DO sold 2,300 forms to an eligible population of 60,000, and were returned 225 applications. In all, between the DDA and the L&DO, a total of 1325 applications were received, accounting for

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market. Jha (1984), notes that till 1982, 47.1% of land had been auctioned to the HIG, while the LIG received only 20.9%.

<sup>21</sup>The "Patriot", in an editorial titled: "End of an anomaly", notes, "The Union cabinet's decision to allow conversion of leasehold plots of (upto) 500 sq. m. into freehold land in Delhi for a fee is a welcome step. It will help housing and benefit lakhs of people owning Janata, low-income, middle-income group flats, the self-financed DDA-built apartments and the cooperative group housing societies" (The Patriot, 2/17/92).

just 0.51% of total eligible lessees. In contrast to the expectations surrounding the introduction of the scheme, the actual response was surprisingly meagre. Why did this occur?

### **The Contradiction of Compulsion: From Compulsory Leasehold to Compulsory Freehold**

The government attributed the minimal response from residents to the fact that the last date for the filing of applications had allowed lessees inadequate time to prepare the necessary documents (The "Patriot", 7/12/92). A notification dated February 26th, 1992 was issued by MUD, extending the last date for filing applications by a year. R.K. Bhargava, Secretary, MUD, announced at a public forum that the last date for the payment of conversion fees was now extended from March 31, 1992 to March 31, 1993, in response to "people's demands" (Hindustan Times, 2/27/92).

In order to speed up the conversion process, the government insisted that conversion to freehold tenure would be compulsory for residential plots smaller than 150 square yards in area.<sup>22</sup> Two primary reasons prompted the government's decision. One, to generate immediate revenue, and two, to free itself from the responsibility of leasehold administration. Properties smaller than 150 sq. yds. account for over 70% of all leasehold properties in Delhi. If all these properties were converted immediately, urban administration would have divested itself at one stroke of a large part of its responsibilities with regard to lease administration (Agrawal, 1993). Probably of more importance in the government's decision however, was the significant source of revenue that immediate conversion would have generated for future urban development.

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<sup>22</sup>According to the official notification of February 15, 1992, conversion to free-hold tenure was made compulsory for plots smaller than 150 sq m and optional for plots sized between 150 and 500 sq. yds.. An editorial in the Hindustan Times (2/17/92) notes, "While this is obviously meant to ensure greater response to the conversion offer, there is little justification for making it compulsory for certain categories, which is a major departure from the scheme announced last year. The stipulation that all built-up plots of up to 150 sq. yds. must be converted to freehold, while it is optional for the rest ... is likely to be viewed as discriminatory."

Lessees however questioned the legitimacy of the administration's attempt to enforce compulsory conversion.<sup>23</sup> A consumer protection organization, Common Cause Society, decided to take the issue to the courts. H.D. Shourie, Director of Common Cause, notes in an article in the Hindustan Times (2/21/93):

When the leasehold rights were given ... [to residents] ... , no stipulation had been made in the lease agreements that the lessee will be compulsorily required at a subsequent stage to get the leasehold converted into freehold ... . Where the lessee is not selling the property, where the family living in it is content with the original stipulation of 99 years' lease, ... and particularly where the lessee is not in a position to afford the money required for conversion, how can he be compelled to get it done? If he does not want to seek conversion, or if he cannot afford it, and within 60 days he does not apply for the conversion, will the government throw him out of the property he built say 20 years ago?<sup>24</sup>

Other residents' associations joined Common Cause in opposing the government's attempt to impose compulsory conversion. The Apex Association of DDA colonies filed a writ petition in the Delhi High Court requesting that freehold conversion be optional for all residents.<sup>25</sup>

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<sup>23</sup>Tyler (1990) explains why people obey law from a normative perspective, which assumes that compliance is based on perceptions of morality and legitimacy. According to Tyler, conformance to law that is perceived as just is commitment through "morality". Conformance as a result of a perception that authority enforcing law has the right to dictate behavior, is termed commitment through "legitimacy" (Tyler, 1990: 4).

<sup>24</sup>Agrawal (1994), notes that according to Indian law, physical possession is "three-fourth title". Law is heavily skewed in favor of tenants where conflict with owners occurs. In the event that urban administration 'determines' a lease contract, at most the resident can be declared illegal, but the administration does not have the legal power to evict residents. Indian legal procedure and its interpretation by law insist that no one can be rendered homeless.

<sup>25</sup>Residential apartment buildings with more than four apartments, are required by the Apartment Ownership Act of 1986, to be represented by a residents' association. All DDA housing comes under the purview of this . All DDA residents associations are registered with the Apex Association of DDA Colonies, and their members have automatic membership of the

Surprised by the response from the residents, an open forum was held on 26th February, 1992 by the government to invite public discussion on the conversion policy (See Illustration 1).<sup>26</sup> R.K. Bhargava, Union Urban Development Secretary, stated at the meeting that the open forum had been organized to listen to suggestions from residents on how the modalities of the scheme should be worked out, so that "it causes least inconvenience to the beneficiaries" (Hindustan Times, 2/27/92). At the forum attended by a few hundred people, the compulsory conversion clause in the official notification was frequently referred to by members of the audience. One resident took to the dais to say: "What will the government give me if I pay up. And what will it do if I refuse to pay anything?" (Hindustan Times, 2/28/92). The Hindustan Times, which covered the event, notes that the audience cheered in response to the question, and demanded an answer from Bhargava. Bhargava replied that the issue would be noted, and a decision would be taken at a later time. The audience refused to be satisfied until he conceded: "If somebody does not want conversion, we have to consider such an eventuality" (Hindustan Times, 2/28/92).

The case disputing the government's right to impose compulsory conversion was slated for a hearing before the division bench of the Delhi High Court on 3rd March, 1993. Residents Associations requested that a "stay" be granted on the conversion scheme.<sup>27</sup> Fearing that the High Court would grant the stay and effectively halt the implementation of the conversion scheme, the government despatched a representative early in the morning of that day to the presiding judge to inform him that the conversion scheme was now optional. The Hindustan Times reported that day, that according to a

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larger body. The Apex Association therefore represents the interests of all residents of DDA housing.

<sup>26</sup>Agrawal (1993), notes that the open forum was a first attempt by the Indian government to invite public participation in shaping its decisions.

<sup>27</sup>A "stay" or injunction, is a temporary freeze on the implementation of government law that is under dispute for normative reasons. A court of law hearing such a case may in some cases where there appears to be sufficient justification, grant a stay until it takes a decision on the appropriateness of such law. The granting of a stay is in itself considered a moral victory for the party requesting the stay (Agrawal, 1994).

**MINISTRY OF URBAN DEVELOPMENT**

**CONVERSION OF  
LEASEHOLD TO FREEHOLD**

**AN OPEN FORUM WILL BE HELD TO ANSWER  
QUERIES ON THE ORDERS ISSUED ON  
CONVERSION OF LEASEHOLD TENURE OF LAND  
TO FREEHOLD IN DELHI.**

**ALL RESIDENTS WELFARE ASSOCIATION,  
APEX BODIES, NGOs ARE WELCOME.**

**VENUE: MAVALANKAR HALL, RAFI MARG  
NEW DELHI.**

**DATE: 26.2.92**

**TIME: 5.00 P.M.**

**devp 638/29/91**

**PD-4515**

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**Illustration 1**

*Source: The Patriot, New Delhi, February 25, 1992*

MUD notification, conversion of flats and built-up land plots measuring up to 150 sq. yards was now optional, (Hindustan Times, 3/3/93).

At the forum held on the 26th of February, the Union Urban Development Secretary noted that the conversion rates would remain static until March 1993, but would be raised after that deadline (Times of India, 2/28/92). Common Cause, while filing a case questioning the constitutional validity of the freehold conversion policy, asked that the last date for filing applications be further extended to enable residents enough time to complete the necessary paperwork and arrange for the necessary finance (The Pioneer, 12/18/92). MUD was directed by the High Court to consider extending the last date for filing applications beyond March 31 1993.

The deadline for filing applications was again extended. By July, 1993, however, of a total 260,000 eligible households, only a little under 7.3% had filed for conversion.<sup>28</sup>

I attempted to find through my fieldwork in New Delhi over the summer of 1993 why the conversion scheme had met with such a poor response. Could conversion charges have been too high? The political opposition, independent observers, residents' associations, and even most government officials are in agreement that the government's determination of the conversion charge is the reason for the low response. I found, however, that the determination of the conversion charge cannot fully explain why such a small percentage of eligible leasehold residents chose to apply for freehold conversion.

### **High Conversion Charges**

Most sources in the government, independent analysts, residents and the political opposition in New Delhi clearly feel that the conversion charge is too high and the only cause for the poor response to the scheme.

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<sup>28</sup>Percentages calculated from L&DO and DDA records of total applications received.

MUD officials when interviewed, said that conversion charges were progressive, increasing with the income group of lessees, and provided residents additional tenure security at a highly discounted rate. Why then, they asked, would lessees not pay for the benefit of owning their own homes? In private however, most government officials admit that conversion charges are fixed too high (Banerji, 1993, et al).

Independent observers stress this assessment. One analyst notes:

"The main reason for the obvious failure of the scheme is the fixation of somewhat high and arbitrary rates of conversion." (Gopal Sharma in the Statesman, 11/6/92).

An analysis in the Economic Times (3/14/93), notes that there is little economic incentive for lessees to change from leasehold to freehold tenure. Like other independent analyses, this assessment focuses on a comparison between lease rent or "ground rent" payable over the life of the lease under leasehold tenure and the charge applicable for conversion to freehold tenure.<sup>29</sup> The assessment illustrates its case with the example of a 520 square yard plot in Geetanjali Enclave, leased in 1973. The plot commands a premium of Rs. 13,000, with an annual ground rent liability of Rs. 131. The assessment notes that if the lessee compounds his lease return on a one-year deposit with a commercial bank at the prevailing 1992 interest rate of 12 percent, the amount of a permanent deposit required would be Rs. 1091.66.

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<sup>29</sup>The ground rent for residential properties is fixed as a percentage of the premium laid down at the time of allocation of land. This percentage varies from one to two-and-a-half percent depending on the type of leasehold property. The assessment of ground rent has varied over the years as a reflection of rising land costs. For residential land sold in the early seventies, the sales price of plots ranged between Rs. 200-300 per square yard. Property in areas such as Lajpatnagar in South Delhi, sold at the rate of Rs. 200 per sq. yd. The ground rent in this case was assessed at an annual of one rupee per square yard. For a plot leased in Geetanjali Enclave in 1973, the ground rent was assessed at Rs. 131 per sq. yd. As ground rents have never been revised since initial assessments, such major disparities have persisted (Economic Times, 3/14/93). The lease contract entitles the government to make periodic rent revisions every 30 years during the term of the lease. Agrawal (1993), notes that such rent revision was not made in the past, even though lease administration was presented with two opportunities to do so. He attributes lease administration's reluctance to revise ground rent to its political unpopularity.



The one-time conversion charge payable to the DDA, calculated according to government's conversion formula (see Illustration 2), would be:

$$\text{Conversion charge} = (32.5 \times R) + (0.2 \times R \times P - 350)$$

where,

Area of plot = 520 square yards = 435 square meters

P = Plot area in square meters

R = Land rate in Rs. per square meter as fixed by the notification for residential properties

$$\begin{aligned}\text{Conversion charge} &= (32.5 \times 3600) + (0.2 \times 3600 \times 435 - 350) \\ &= 117,000 + 61,200 \\ &= \text{Rs. } 178,200\end{aligned}$$

This example however, is clearly an inappropriate one. Under the present conversion scheme, plots larger than 500 square yards are not eligible for freehold conversion. A second example is a more accurate illustration of this analyst's case. This time a 900 square foot flat is considered.

This flat sold by the DDA in another locality, Sarita Vihar, commanded a sales price of Rs. 138,000 in 1985. The lease rent in this case was fixed at Rs. 203 per annum. For the lessee of this flat, the bank deposit required to meet the liability of lease rent in perpetuity at an interest rate of 12% p.a. is Rs. 1691.66. The one-time conversion charge determined by the DDA, however, is Rs. 25,000. The analyst concludes that for the lessee who has no intention to sell his or her property, or redevelop it, there can be no incentive to change land tenure.

H.D. Shourie of Common Cause notes that the average conversion charge of Rs. 30,000 is for the middle class lessee, high and not in immediate reach (Hindustan Times, 2/21/92). V.V. Saranathan, Chairman of the Apex Association of DDA colonies, finds the rates of conversion "far too high" (Hindustan Times, 2/23/92). This position is echoed by the political opposition. The BJP's city unit president, V.K. Malhotra, notes that the fee that the government wants for allowing conversion of their leased land into

# Rates of conversion into freehold

These are the conversion rates decided by the Union government for conversion of their leased land into freehold in Delhi. Conversion is compulsory for all flats and tenements and for built-up plots upto 150 sq.m. Those owning a flat on power-of-attorney from the original lessee will have to pay a 33.3 per cent surcharge on the conversion fee applicable. The detailed terms of where and how to apply will be gazetted within 60 days.

## (A) For plots:

Plot area in Sq. Mtrs	Conversion Fee to be calculated on the following basis	Formula for calculating conversion fee
Upto 50	Nil	Nil
Above 50 upto 150	7.5% of notified land rate per Sq. Mtr for area above 50 Sq. Mtrs.	$0.075 \times R \times (P-50)$
Above 150 and upto 250	Conversion charges applicable to 150 Sq. Mtrs. plus 10% of notified land rate per Sq. Mtr. for area above 150 Sq. Mtrs.	$(7.5 \times R) \text{ plus } [0.1 \times R \times (P-150)]$
Above 250 and upto 350	Conversion charge applicable for 250 Sq. Mtrs. plus 15% of notified land rate per Sq. Mtr. for area above 250 Sq. Mtrs.	$(17.5 \times R) \text{ plus } [0.15 \times R \times (P-250)]$
Above 350 and upto 500	Conversion charge applicable for 350 Sq. Mtr. plus 20% of notified land rate per Sq. Mtr. for area above 350 Sq. Mtrs.	$(32.5 \times R) \text{ plus } [0.2 \times R \times (P-350)]$

P = Plot area in Sq. Mtr.

R = Land rates for residential purposes in rupees per sq. mtr. as notified by the Ministry of Urban Development. For the period upto 31.3.1992 the conversion charges would be calculated on the land rates notified by the Ministry of Urban Development w.e.f 1.4.1987 vide their letter No. J-22011/4/87-LD. dated 1.6.1987 (Annex-C). For the period beyond 31.3.1992 the notified land rates applicable for calculating the conversion charges would be those prevailing on the date of conversion.

[For areas where rates have not been notified by the Ministry of Urban Development, the residential land rates notified by the Delhi Development Authority for the area would be applicable]

## (B) For Tenements leased by Land and Development Office

Category of Tenements	East Zone	North/West Zone	South Zone	Central Zone
1. 'C' type tenements	Nil	Nil	Nil	Nil
2. 'A' type tenements				
i) First Floor	3,000	9,000	12,000	15,000
ii) Ground Floor	4,250	12,750	17,000	21,250

For flats/tenements allotted by Delhi Development Authority and its Slum Wing on leasehold basis:

Category of flats/tenements	East Zone	North/West Zone	South Zone	Central Zone
Janta	Nil	Nil	Nil	Nil
LIG	3,000	9,000	12,000	15,000
MIG/SFS(I)	4,250	12,750	17,000	21,250
type-II				
SFS(II)/HIG/	6,250	18,750	25,000	31,250
Type-II-A/				
Type-II-B.				
SFS(III)	7,500	22,500	30,000	37,500

(C) For flats constructed by Group Housing Societies on land allotted by Delhi Development Authority:

Plinth area of flat/tenement	East Zone	North/West Zone	South Zone	Central Zone
Below 30 Sq. Mtrs.	Nil	Nil	Nil	Nil
30 to 50 Sq. Mtrs.	3,000	9,000	12,000	15,000
50 to 75 Sq. Mtrs.	4,250	12,750	17,000	21,250
75 to 100 Sq. Mtrs.	6,250	18,750	25,000	31,250
100 to 125 Sq. Mtrs.	7,500	22,500	30,000	37,500
Above 125 Sq. Mtrs.	See (D) below			

(D) For flats/tenements of Group Housing Societies on land leased by Delhi Development Authority of plinth area exceeding 125 Sq. Mtrs. the conversion charges would be on the basis of the formula given in Para 1.4 above. The plot area would be deemed to be 1.2 x Plinth Area of the flat.

## Illustration 2

Source: The Times of India, New Delhi, February 17, 1992

freehold is far too high". Malhotra goes on to warn that if the government did not revise the conversion charge, the party would have to "plan some form of action" (Times of India, 2/18/92).

### **Dispute over the Method of Determining the Conversion Charge**

Residents, independent analysts and the political opposition contest the government's determination of conversion charge on the basis of market rates of land. They suggest that the charge be determined on the basis of the ground rent payable over the remaining life of the lease. However, the administration does not accept such a determination.

The relationship of the government's conversion charge to the ground rent is frequently made by sources outside of the government. These sources choose to refer to the government determined conversion charge in terms of multiples of annual ground rent. The Patriot (2/18/92) quotes the BJP's reference to the conversion charge as "100 to 1000 times the lease money" (ground rent). This relationship is clearly made to set up their alternative proposal.

The BJP City Unit President, V.K. Malhotra, describes the official conversion scheme as a "fraud on the people", for the government requires that residents pay more than the ground rent payable over the remaining life of the lease (Times of India, 2/18/92). The BJP suggests three modifications to the official scheme. First, that residents be charged a flat rate equivalent to ten times the annual ground rent. Second, that the market rates of land not be used to determine the conversion charge. Third, owners of slum colony homes and plots be given freehold rights for a flat sum (presumably a nominal one).

From the side of the residents, the Secretary General of the Apex Association of DDA colonies, G. S. Sharma, notes that if the government charges ten times the annual ground rent for conversion, the annual interest on the amount collected will be more than the ground rent (Indian Express, 2/26/92). Sharma is quoted as saying at the open forum held on the 26th of February, 1992, "ground rent should be the basis for calculation ... [of the conversion

charge]. The government can charge 10 times the ground rent for conversion" (The Times of India, 2/28/92). The equation of conversion charges to ground rent recurs through public discussion on the conversion rates. Other proposals recommend a conversion charge ranging from ten to twenty times the ground rent. It is noted that capitalization of an amount equivalent to ten times ground rent equals total ground rent payable over the life of the lease.

The Economic Times' assessment referred to earlier, recommends that the tenure conversion charge be limited to the amortization of the ground rent (Economic Times, 3/14/93). This analysis notes that the amortization of ground rent requires its multiplication by a factor of 8.33. The analysis notes that a further margin may be added if the government also wishes to be compensated for potential revenue loss from future ground rent revisions. The conversion charge would then need to be fixed at ten times the current ground rent valuation (Economic Times, 3/14/93).

Sharma explains this linkage of conversion charges to the amortization of the ground rent. He refers to the example of earlier precedents. He notes that an amount equal to ten times the annual property tax was collected when the government decided to stop an annual collection of the tax, and an amount calculated in a similar way was substituted for the annual road tax payment (Indian Express, 2/26/92). The implication of the parallels drawn by Sharma is clear. The government suffers a loss of revenue by giving up its right to collect ground rent when it allows freehold conversion. Sharma feels that a fair determination of the conversion charge must reflect only this potential revenue loss.

MUD officials, however, dispute this interpretation linking the conversion charge to the amortization of the ground rent. They point out that by allowing conversion to freehold tenure, the government not only gives up its right to collect ground rent, but also transfers rights additional to those guaranteed under the lease contract. They note that freehold ownership gives residents greater security of tenure than under leasehold ownership, and allows residents additional rights such as the right to transfer property. By allowing the right to transfer property without restriction, they say, the administration also gives up the right to collect "unearned increase", at the

time of property transfer. The urban administration, they contend, must be compensated not only for ground rent payable, but also for the loss of potential revenue from "unearned increase". Parallels such as those that Sharma draws to schemes for the capitalization of property taxes, they say, are therefore inappropriate, as no such loss of additional revenue is involved.

Leasehold residents, however, ignore this argument. H.D. Shourie of Common Cause notes that for the average middle class lessee, the charge for conversion is not commensurate with the benefit provided by the additional freehold rights "for which he does not consider any imperative need" (Hindustan Times, 2/21/92). In filing a case in the New Delhi High Court disputing the "unfair" conversion charge on behalf of Common Cause, Shourie questioned the constitutional validity of the freehold conversion policy, claiming that it was "misconceived" and the conversion rates "exorbitant" (The Pioneer, 12/18/92). In insisting that the government lower the conversion charge, Shourie takes a more extreme view:

"Law abiding people preferred to purchase land or flat on leasehold than to buy unauthorized land. Unauthorized colonies have been regularized and are freehold, while law abiding citizens have to pay huge amounts for conversion. Why should any conversion charge be paid at all? " (Economic Times, 6/28/92).

In July 1993, a total of 13 different cases contesting various aspects of the conversion charge were pending in the Delhi High Court (Agrawal, 1993). These disputes over the conversion charge remain unresolved at the time of writing. The official explanation, then, is that the low response to the conversion scheme can be attributed to expectations that the conversion charge will be lowered. A decision on the success or failure of the conversion scheme, government officials say, must await the High Court's decision on whether the conversion charge should be lowered and how it should be determined. In the following section, I show that the high conversion charge cannot fully explain why residents did not convert to freehold ownership.

## **Did Residents Not Convert Only Because the Conversion Charge was Too High?**

Not all leasehold residents are required to pay a conversion charge. Conversion for lessees of LIG and EWS property measuring less than 50 sq. yds. can be effected without the payment of a conversion charge (see Illustration 2).<sup>30</sup> Residents of these properties are also exempt from a surcharge normally applicable to residents who have acquired property through the power of attorney (Government of India, 1992). If the reason for the low response to the conversion scheme was that the conversion charge was too high, those eligible for free conversion should show a significantly higher response rate than those required to pay a conversion charge.

I compare total applications from both DDA and L&DO properties to total eligible applicants from both lease administrations.<sup>31</sup> The number of applications received in each group is compared to total eligible applicants, to reveal the percentage of conversion for both groups. While percentage of applications for DDA administered leaseholds is 7.9%, conversions for the L&DO stands at 5.23% (refer Table 2). Comparison of the percentage of free conversions against total conversion percentages for DDA and L&DO administrations proves to be more difficult. Data entry and the maintenance of records at the Conversion Cell of the L&DO, and at the DDA, continues to be by hand. As significant man-hours are involved in tabulation, breakdown

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<sup>30</sup>An application and processing fee totalling Rs. 250 (approximately US\$ 8) is payable to the government even for the "free" conversions.

<sup>31</sup>The residential leasehold system in urban Delhi is maintained by three administrations. First, leases administered by the DDA, introduced in 1961 by the Scheme for the Large Scale Acquisition, Development and Disposal of Land. Second, leases administered by the Land and Development Office (L&DO). These leases were transferred from the Ministry of Rehabilitation and Resettlement, which was set up specifically to house refugees from Pakistan following India's partition in 1947. Most of the resettlement colonies were developed in the second half of the fifties and transferred to allottees on leasehold tenure. On the dismantling of the Ministry in 1957, these leases were transferred to the L&DO, a department within MUD. Third, the historical leaseholds introduced in 1911 by Lutyens' plan for New Delhi. These leaseholds are administered by the Municipal Corporation of Delhi (MCD).

by category is not maintained.<sup>32</sup> To minimize the problem of manual tabulation, I select one particular area for analysis rather than the entire administration. Lajpatnagar, an L&DO administered leasehold area in South Delhi is selected, as it is at present one of Delhi's most rapidly changing land markets. Land values in Lajpatnagar have risen at a higher rate in recent years than other areas in Delhi.

Lajpatnagar was developed by the Ministry of Rehabilitation and Resettlement to house Punjabi refugees from Pakistan (mostly Hindus), lease maintenance for Lajpatnagar was transferred to the newly set up Land and Development Office (L&DO) in 1957. In recent years with rising demand, better infrastructural linkage has meant that land prices in South Delhi have changed more rapidly than in others (see Chapter 1). As a result, Lajpatnagar, once predominantly a lower middle income neighborhood, has seen significant transformation. The mushrooming offices of property brokers and builders attest to the increased desirability of investment in the local residential market. Under such a situation of increasing demand, confirming legal title to land offers a means to reaping greater economic profit from property transactions. Further, in the case of irregular power of attorney transactions, confirming tenure security through freehold conversion should be a predominant concern for local residents.

As residents eligible for free conversion are entitled to the means to greater economic profit or tenure security at no economic cost, then it is logical to assume that the rate of conversion for this group should be significantly higher than for others. In Lajpatnagar, the only properties eligible for free conversion are 1,536 two-room tenements termed 'C'-Type Tenements. Figures for 'C'-Type applications were manually tabulated from L&DO files maintained by its Conversion Cell. As residents of leasehold property under 50 sq. yds. in area, are the only group of leasehold residents for whom

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<sup>32</sup>The new computer cell at the DDA uses a standard format that essentially duplicates the hard copy application form filed by leasehold residents. Again, no attempt is made to differentiate applications either by plot size category or by income category. This rather unimaginative approach ignores the potential for analysis of data entry fields, and frustrates any attempt at a meaningful analysis.

## **Table 1**

### **Percentage of Total Conversions versus 'Free' Conversions**

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#### **For DDA Administered Leaseholds:**

*(Source: DDA Records)*

Applications received between February 15, 1992 and July 31, 1993:

Total Applications Received: 15,803

Total Eligible Applicants: 200,000

Percentage of Applicants: **7.90 %**

#### **For L&DO Administered Leaseholds:**

*(Source: L&DO Records)*

Applications received between February 15, 1992 and August 6, 1993:

Total Applications Received: 3,140

Total Eligible Applicants: 60,000

Percentage of Applicants: **5.23 %**

#### **' Free' Conversions in L&DO Administered Leaseholds:**

*(Source: L&DO Records)*

Applications received between February 15, 1992 and July 27, 1993:

Total Free Conversions ( 'C' Type Tenements) in Lajpatnagar: 124

Total Eligible Applicants ('C' Type Tenements) in Lajpatnagar: 1536

Percentage of Applicants: **8.07 %**



property acquired through the irregular power of attorney transfer does not invite an additional surcharge. The rate of conversion should logically be much higher than the norm.

Free conversions for Lajpatnagar equal 8.07% (see Table 1). The percentage of conversion across groups eligible for "free" conversion and those required to pay a conversion charge then, shows little variance. There appears little indication therefore, that the price fixed for the conversion charge has significantly affected the percentage of conversion.

Further tabulation to determine the rates of conversion for all plots under 50 sq. yds., and by different plot sizes and income categories, is required, before a generalizable conclusion can be made on the relationship between the conversion charge and the rates of conversion. If the pattern observed in Lajpatnagar holds for the entire residential leasehold sub-market, the government's presumption that resolving the dispute over the conversion charge will result in a significant increase in freehold conversions, cannot be supported. While, as discussed earlier, high conversion charges do deter some residents from converting to freehold tenure, they cannot be the only reason why residents do not choose to do so. In the following chapter, I discuss the three primary reasons why residents do not convert to freehold ownership.

## Chapter 3

### WHY RESIDENTS DO NOT CONVERT TO FREEHOLD TENURE

Administration officials tacitly accept that their determination of the conversion charge dissuaded residents from converting to freehold ownership, by claiming that residents will apply for conversion only after the Delhi High Court delivers its decision on the dispute over the conversion charge. I have shown that the high conversion charge cannot fully explain the low response to the freehold conversion scheme. As indicated earlier, there are three primary reasons why residents did not choose to convert to freehold tenure. First, freehold conversion imposes not just the direct cost of the conversion charge but also indirect costs that significantly increase the cost of conversion. These costs are discussed directly below. Second, the transfer of the right to permanent title to legal lessees and formal and legal title for residents who have irregular title through the power of attorney, appears largely superfluous. The issue of the relevance of permanent and formal title is discussed in the second section. Third, the right to freely transfer property was of little value to residents, because the power of attorney transaction allowed secure transfers of property. In addition, the use of the power of attorney for the transfer of leasehold property, gives both buyer and seller greater economic benefit than regular sales transfers. These economic benefits are described in the third section of this chapter. Contrary therefore to the administration's contention that conversion has economic value to residents, as it involves the transfer of rights additional to that given through government law, it appears that residents already enjoy de facto rights that make the legal transfer of these rights unnecessary.

## High Indirect Costs of Conversion

Lessees find that conversion to freehold tenure involves additional costs over and above the conversion charge. A Ministry of Urban Development notification dated 2/25/92, requires certain conditions be met before an application for freehold conversion will be considered. According to this notification, lessees directly or indirectly incur three kinds of charges in addition to the applicable conversion charge.

First, the conversion deed must be registered, which requires the payment of a registration charge and a stamp duty. These additional charges are estimated at approximately nine percent of the applicable conversion charge (The Economic Times, 14/3/93).

According to a second clause, all arrears of ground rent along with interest will have to be paid "prior to the grant of conversion permission" (Economic Times, 3/14/93). Krishna Rao (1993), points out that recovery of past arrears is mandatory before any permits are issued by the L&DO or the DDA. As with the collection of ground rents, lease administration rarely actively enforces lease restrictions. The administration usually waits for residents to come to them for permits for construction, sales transfers, "mutation" or intergenerational transfer, and mortgages, to collect all unpaid and past dues. Residents therefore express some trepidation about seeking permits from lease administration, as to do so only invites the attention of the administration that under the normal course is not directed towards such non-compliance to lease restrictions. However, the costs imposed are not always very high, such as when only past arrears of ground rent have to be paid. In many cases, as pointed out in Chapter 2, ground rent is very low, and paying past arrears does not impose a significant cost. One resident of a high income category DDA flat could not remember what the ground rent assessment for his apartment was. He explained that neither he, nor anyone that he knew in his neighborhood, had paid the bi-annual ground rent in

recent years, and he had forgotten how much it was.<sup>33</sup> As far as he could remember, he added, it was "quite low".

A third clause notes that applicants are required to file an affidavit that there is no "unauthorized construction". This clause refers to restrictions imposed by the lease contract on extensions to leasehold property. Residents had to apply for a formal permit from both the lease administering body, and because of the jurisdictional overlap, the local municipal corporation. One leasehold resident from South Delhi told me that he had considered filing for conversion, but because of this clause, had decided not to. He noted that he had invited professional opinion from an architect before making an extension to his house. He had been assured that the extension did not qualify as a deviation under the municipal by-laws. This resident felt however, that he would be harassed by the lease administration because he had not applied for a formal clearance for the extension. He feared that administration employees would delay his application, and demand bribes to clear his application for processing. The fear of attracting the attention of rent-seeking lease administration employees is frequently mentioned by various sources as a possible deterrent to potential tenure conversion applicants.<sup>34</sup> From my interviews, it is not clear that this was very often a deciding factor. In the case of unauthorized construction, residents can be legally cleared from further liability with the payment of a fine. If that fine is for some reason prohibitive to the resident, he can probably find a rent-seeking agent to ensure immunity from such penalty for a lower economic cost.<sup>35</sup> However, because of the

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<sup>33</sup>Agrawal (1994), notes that when faced with the issue of compliance to law, residents "look to the right and to the left". If they find other cases of non-compliance, they choose to ignore the law for what Tyler (1990) terms "instrumental" reasons. According to Tyler, the instrumental approach explains conformance to law as a result of an analysis of "personal gains and losses resulting from different kinds of behavior" (Tyler, 1990: 3). Where there is no fear of deterrence as a result of the poor enforcement of law, there is a negligible cost involved.

<sup>34</sup>Gambhir (1993), suggests that the image of the DDA as a corrupt organization is so pervasive that people are afraid to come to the DDA even when it is in their interest to do so, for fear of harassment.

<sup>35</sup>For instance, such immunity can be obtained by a page "disappearing" from the file listing the offence, with no one the wiser. Bribes for such "services" in India, and more so in Delhi,

Table 2

**Relative Conversion Charges for Lessees versus Power of Attorney Holders**

	EAST	NORTH/ WEST	SOUTH	CENTRAL
<b>LIG</b>				
Charges for Lessees	3000	9000	12,000	15,000
Surcharge for PoA	999	2997	3996	4995
Total for PoA	3999	11,997	15,996	19,995
<b>MIG/SFS I Type II</b>				
Charges for Lessees	14,250	12,750	17,000	21,250
Surcharge for PoA	1,415.25	4,245.75	5661	7076
Total for PoA	5,665.25	15,510.75	22,661	28,326
<b>HIG/SFS II Type II (A &amp; B)</b>				
Charges for Lessees	6,250	18,750	25,000	31,250
Surcharge for PoA	2,081	6,243.75	8,325	10,406.25
Total for PoA	8331	24,993.75	33,325	41,656.25
<b>SFS III</b>				
Charges for Lessees	75,000	22,500	30,000	37,500
Surcharge for PoA	2,497.50	7,492.50	9,990	12,487.50
Total for PoA	9,997.50	29,992.50	39,990	49,987.50

Source: *The Economic Times*, New Delhi, March 14, 1993

involve a simple and direct logic, and little ambiguity. They are variable according to the bribe-seeker's assessment of the bribe-maker's ability and willingness to pay. In that sense they are "progressive" and particularized, as they are directly related to a particular individual's ability to pay. Some amount of negotiation is usually involved in the "transaction". The "going rate" for a particular "service" is shared and information freely spreads outside the organizational system that a bribe-maker wishes to have access to.

overlap of control with the municipal corporation, residents are not cleared of liability to the municipal corporation.

Properties transferred on the basis of a power of attorney, invite charges in addition to the three mentioned above (Table 2). According to the notification of 25 February, 1992, in addition to the applicable conversion charge, a surcharge of 33.3 percent of the conversion fee is levied in such cases (Economic Times, 3/14/93).<sup>36</sup> Such properties become eligible for freehold conversion only if the applicant is able to establish proof of possession of the property. According to Indian law, "proof of possession" is established by registration with the Sub-Registrar of Deeds. As power of attorney transactions are considered irregular by urban administration, the lease administering authority does not recognize that leasehold rights have been legally transferred from seller to buyer in such a transaction. Formal leasehold title, and hence "proof of possession", remains in the name of the original lessee. For the registration of the property with the Sub-Registrar of Deeds, a resident who has transferred leasehold rights through the power of attorney now needs to pay registration charges and stamp duties avoided at the time of the irregular sales transfer. At approximately nine percent, these charges are assessed on the sales price. In addition, conversion requires further registration costs at nine percent of the conversion charge, before the lease administration will issue the "conveyance deed". Registration costs for properties transferred on the power of attorney then, are significantly higher than for legal lessees.

Sharma of the Apex Association claims that the government's decision to regularize power of attorney transfers through the payment of the additional surcharge is an appropriately progressive strategy given the prevailing housing shortage. He likens the move to the way "in which unauthorized clusters are given legal ownership by the government in a welfare state" (Hindustan Times, 3/15/91). He notes:

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<sup>36</sup>Residents of plots smaller than 50 sq. yds., as noted earlier, are exempt from the surcharge.

The decision by the government that those who have bought [leasehold] property on power of attorney have to pay 33.3 percent above the normal conversion fee for making their leasehold property freehold has for the first time given 'legitimacy' to those people owning [leasehold] property through power of attorney." (G.S. Sharma, Secretary General, Apex Association of DDA Colonies, quoted in the Hindustan Times, 3/15/91).

The option to regularize power of attorney transfers has however been available to residents since October 1989. A scheme was introduced at that time to allow the regularization of power of attorney transactions. Under this scheme, buyers who had acquired property through the power of attorney were permitted to regularize these transfers. To do so, buyers were required to pay the 50% unearned increase assessed according to a fixed zonal scale, plus a 2.5 percent levy assessed on the ground rent. An article in the Hindustan Times (10/13/89) refers to this scheme:

The first advertisement, three months ago, said that all such transactions effected before 31.3.1989 should be regularized before the end of June. Thereafter, another advertisement stated that on account of large public demand the date had been extended to the end of September. It is said that the large demand was the receipt of merely 114 applications for regularization. It would be interesting to know how many applications have by now been received by DDA as against the tens of thousands of [power of attorney] transactions that have taken place. (H.D. Shourie in the Hindustan Times, 10/13/89).

This first scheme met with a poor response, as is evident from an article in The Indian Express. The Express notes: "The rates in that scheme were high ... And there were no takers among the property owners" (Indian Express, 4/11/91). The second scheme of March 1991 (refer Table 3), reduced the rates for the regularization of the power of attorney. The Indian Express reports:

The government's scheme for converting leasehold [property] to freehold, ... allows a double benefit for ... [residents] ... who have purchased property on power of attorney. Not only have the rates for converting

Table 3

## Charges for Regularization of Power of Attorney Transactions

UNEARNED INCREASE/CONVERSION CHARGES PAYABLE BY G.P.A. HOLDERS OF DDA FLATS FOR REGULARISATION OF THEIR TRANSACTIONS.								
	EAST ZONE		WEST ZONE		NORTH ZONE		SOUTH ZONE	
	As per scheme announced in Feb. 1990	As per new scheme an- nounced in March, 91	As per scheme announced in Feb. 90	As per new scheme an- nounced in March, 91	As per scheme announced in Feb. 1990	As per new scheme an- nounced in March, 91	As per scheme announced in Feb. 90	As per new scheme an- nounced in March, 91
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)
JANATA	3,800/-	NIL	14,450/-	NIL	15,050/-	NIL	18,950/-	NIL
L.I.G.	8,000/-	4,000/-	30,500/-	12,000/-	31,750/-	12,000/-	40,000/-	16,000/-
M.I.G.	16,050/-	5,666/-	61,050/-	17,000/-	63,550/-	17,000/-	80,050/-	22,666/-
SFS(II)	17,100/-	8,666/-	65,050/-	25,000/-	67,700/-	25,000/-	85,300/-	33,333/-
SFS(III)	21,750/-	10,000/-	82,700/-	30,000/-	86,100/-	30,000/-	1,08,450/-	40,000/-

Source: The Indian Express, New Delhi, April 11, 1991



properties from leasehold to freehold been reduced [relative to the earlier Rajiv Gandhi Government's scheme of 1989], but the cost of regularizing the general power of attorney (GPA) has also been slashed. In [the 1989 scheme], there was no provision for conversion to freehold. ... [The conversion fee].. includes a 33.3% surcharge if property has been transferred on power of attorney. (Indian Express, 4/11/91).

For these residents with irregular title to property however, the cost of regularizing their right to that property comes at a significantly lower cost than under previous regulation. Further, by allowing for the first time the additional incentive of freehold conversion, the residents simultaneously benefited from the additional rights granted by freehold ownership. Why then did residents possessing irregular title to property not choose to convert, with the costs of regularization reduced and the benefits greater?

### **Tenure Security Through Freehold Ownership of Little Significance**

Though lessees appear to see little benefit in the government's freehold conversion scheme, it is suggested by some analysts that freehold conversion is beneficial to leasehold residents who have acquired property through the irregular power of attorney transaction. Freehold conversion offers them "legal and regular" title to their property. Others claim that residents find no need for formal title to property other than that provided by the power of attorney.

A builder who operates largely in Lajpatnagar, believes that formal title is unimportant to local residents. He notes that most buyers of property in Lajpatnagar come from the area, or are related to local residents (80-90% by his estimate). As a result, he says, there is a degree of trust operating in the market, which makes it unnecessary for buyers to seek a greater degree of security than offered by the power of attorney. He attributes the closed

structure of the local residential market to causing the lack of interest in conversion.<sup>37</sup>

K.T. Ravindran, Head of the Urban Design Program at the School of Planning, Delhi, confirms that Lajpatnagar's residential market reflects a closed ethnic structure. Studies by his urban design students have documented the social landscape of Lajpatnagar's housing market (Kumar and Srinivas, 1988, et al). Ravindran points out that both residents and property brokers come from the same ethnic background and act concertedly to prevent the entry of other religious and ethnic groups into the area. The closed nature of the residential market in relation to ethnicity, then, has so far been largely self-perpetuating. At the same time, however, a clear social interrelationship between residents of varying income levels is apparent. Local parks are populated in the evenings by male elders of the community disregarding social class to reminisce on their common heritage. Other resettlement colonies in New Delhi also display this high level of social cohesion for the same reasons.

How long this social cohesion will last is unclear. Ravindran points out that surviving patriarchs in these resettlement colonies, and especially in Lajpatnagar, have held their growing families together. With the growth of their families, there has been increased pressure from their children to separate from the social unit of the extended family. Where these patriarchs are the original lessees of lower income group housing, they live in the small two-room tenements allotted to them by the government. New housing has become increasingly unaffordable as housing cost has risen rapidly in the now relatively centrally located resettlement colonies like Lajpatnagar. Tenements in these areas, therefore, have become increasingly overcrowded as the expanding families are forced to share space.

To find whether confirming formal and permanent title had been an issue for residents of such lower income housing, I spoke to a few who had applied for

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<sup>37</sup>Razzaz (1991), points to the importance of kinship and place-of-origin relationships in dispute prevention and containment.

freehold conversion. In one interviewed household, fourteen members shared a two-room tenement. The lessee, Kapoor, lived with his wife, three sons and their families, in the tenement allotted to them by the Ministry of Rehabilitation and Resettlement in 1952. Kapoor had applied for freehold conversion and had recently been notified that his conveyance deed was ready to be signed.<sup>38</sup> As the lessee of a 32 sq. yd. tenement, he was eligible to apply for freehold conversion without paying a conversion charge. When asked whether he was prompted to seek tenure conversion to consolidate his hold on the property, Kapoor and his eldest son replied in the negative. Kapoor, like other interviewed lessees, did not appear insecure about permanence of tenure under the 99-year lease.

If insecurity of tenure was not a reason, why did Kapoor choose to convert to freehold tenure? Kapoor said he did so because it was a "good thing", and his property was no longer subject to the "dual control" of the lease administration and the municipal corporation. The decision to convert, he noted, had been made in consultation with his three sons. From the interview it appeared that his eldest son had taken the initiative in filing for freehold conversion.

Did Kapoor apply for conversion because it would be easier for him to sell his property? When asked whether he planned to sell the property, his eldest son replied, "Who knows? If we get a good price, we may sell." Kapoor did not need to convert to freehold tenure to make such a sale. He had been a lessee for thirty years and was no longer restricted by the ten year lease prohibition on sale. He was free therefore, to transfer leasehold rights at any time.

Did conversion to freehold tenure make it easier for him to transfer property? Kapoor said that if he wished to sell his property, a legal sales transfer required L&DO's clearance for sale. This permit took a long time to process, sometimes even up to a year. He said this delay inhibited lessees' freedom to

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<sup>38</sup>The "conveyance deed" is an official declaration from the lease administering authority establishing the conversion of property from leasehold to freehold tenure. In effect this involves freeing the property from the regulatory jurisdiction of the lease administering authority.

make a sale. An interview with another local resident reveals however, that leasehold property transactions take this procedural delay into account. The transfer of property is usually made at the convenience of the buyer and the seller, and at a mutually acceptable sales price. The buyer then files for sales permission to the L&DO on behalf of the seller. A small percentage of the agreed upon sales figure is held back by the buyer, until he has received legal permission from the L&DO. This informal convention appears to have general acceptance in the leasehold property market. Interestingly, Kapoor did not mention that in the event of a sales transfer, payment of the 50% unearned increase would be necessary at the time of sale, as long as the property remained under leasehold tenure. Converting the property to freehold in effect freed Kapoor as the seller, from the need to split proceeds from sale with the lease administration.<sup>39</sup>

Making a sales transfer however, did not appear an immediate priority with Kapoor and his family. They had recently acquired a second property adjoining their first property through a power of attorney transfer. Kapoor expected to extend this property in the future to accommodate the families of one or more of his sons. This property also had been recently cleared for freehold conversion by the L&DO.

Did Kapoor apply for tenure conversion to make it easier to use his property as security for a loan? Formal financial institutions prefer to mortgage freehold property rather than leasehold property, especially when lease periods begin to run out. Kapoor's second property was acquired through the power of attorney. Banks are reluctant to mortgage such property, unless the request is filed by the original lessee. Conversion to freehold ownership could have made it easier for Kapoor's family to obtain a loan to finance future construction. When asked whether they had converted to freehold tenure to be able to finance any future construction through a mortgage, the eldest son said that had not been a reason. They expected to finance the construction through their own personal savings. The family had expended a large part of

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<sup>39</sup>It must be remembered here that conversion to freehold ownership is not the only way to avoid the payment of unearned increase. Transferring property through the power of attorney allows the same purpose even under leasehold tenure.

its personal resources in acquiring the second property a year ago, and would invest in construction on this property, when they had generated enough in personal savings to do so.

Kapoor's family revealed neither a powerful motive, such as the desire to confirm tenure security, nor an immediate reason, for converting their properties to freehold tenure. They did so for mundane reasons. One, to avoid seeking permits from both the lease administration and the municipal corporation in the event of future construction. Two, to have the option to make a legal sale at some possible future time, without needing to seek a permit or share profits with the government. However, other unspoken reasons may also have motivated them. The idea to convert the Kapoor family's properties to freehold tenure appeared to come from his eldest son. If this was indeed the case, this son may have used the occasion to confirm his claim to the property over that of his two brothers.<sup>40</sup> It is also possible that Kapoor and his eldest son may have used the occasion provided by the transition of tenure to explore how living space could be fairly distributed among the family, and to clarify claims so that there would be little room for later dispute.

As noted earlier, the increased unaffordability of housing has forced the children of original lessees to stay in their parents' overcrowded tenements. These families stay together while the household heads retain legal claim to property as lessees. As these lessees succumb to age, conflicting claims on property erupt with the removal of their controlling influence. Ravindran points out that the municipal courts are now flooded by property claims where siblings contest their right to these properties. As a result, individuals seeking the resolution of such conflicting claims, appear increasingly dependent on the formal legal system to resolve such conflicts. The dependence on trust, as noted by the builder introduced earlier, contributes only partly to the lack of interest in additional legal security offered by formal

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<sup>40</sup>Intergenerational transfer of leasehold property is termed "mutation" by lease administration. Mutation of leasehold property requires that a claimant to the transfer of leasehold rights produce proof that his or her siblings waive their claim to the property. Such a waiver is not required with freehold property.

title to ownership. It appears that these competing property claims can only increase over time, as social ties loosen with change in social relationships.<sup>41</sup>

It was suggested that strong kinship and family ties in the older resettlement colonies create a sense of trust, enabling the resolution of property conflicts without the need for formal law. However, the gradual breakdown of the social order is indicated by competing property claims in court. Clearly residents have not depended only on "trust" to resolve property conflicts even in these ethnically homogenous neighborhoods. It appears that when intergenerational transfer of property occurs, legally defensible right to property acquires importance, especially when individuals are exposed to competing claims. Why then, was formal and regular title not important for residents who had transferred property through the irregular power of attorney?<sup>42</sup>

### **Economic Benefit and Formal Legitimacy Through the Power of Attorney**

In this section I first show that the power of attorney transfer gives both buyer and seller greater economic benefit than regular and legal property transfers. As shown earlier, the option to regularize these irregular transfers has been available to residents for four years now. However, few cases of regularization have been reported. Power of attorney transactions are motivated by the desire to maximize profits from sales transfers, and it appears that few buyers are prepared to pay the costs of regularization. I then show why residents who have irregular title to property through the power of attorney have no need for formal title. Though it appears that buyers who acquire property through the power of attorney only have de facto right to property, they are in fact able to defend their claim to property in a court of law.

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<sup>41</sup>Black (1976: 6) supports such a reading: "the quantity of law increases as the quantity of social control of ... [social groups] decreases, and vice versa".

<sup>42</sup>The Times of India (3/13/91) notes, "By its latest decision ... [allowing conversion into freehold] ... , the government has only given de jure status to a de facto situation.

Residents, real estate brokers and lawyers appear to have collaborated to evolve a sophisticated method to get around lease restrictions on property transfers.<sup>43</sup> That collaboration has resulted in the evolution of the power of attorney transfer. The power of attorney transfer involves three parties in the transaction, and two separate legal documents. The first document is the General Power of Attorney itself. The second is a Sales Agreement. The use of these documents in conjunction enables property transfers without inviting the accompanying transaction costs.<sup>44</sup>

The General Power of Attorney is a legal instrument that designates a representative selected by an owner of any form of property to act on his or her behalf. It is however not intended for a property sale, and therefore legally cannot mention a transaction amount. This document does not require registration with the Sub-Registrar of Deeds. As a result, the power of attorney invites no registration charges. At between eight and nine per cent of the reported sales price, registration charges can be a significant cost to the buyer. A regular transfer of leasehold rights also invites additional cost to the seller. 50% of the unearned increase, assessed relative to the allotment price, is required from the seller for reported sales transfers. In addition, the seller is required to pay a capital gains tax of 30% assessed on the reported sales price.

In the power of attorney transfer of property, the following process takes place. The General Power of Attorney is signed by the seller and a third party, who receives no financial gain in the transaction. This third party is usually a spouse, or other close relative of the seller. The General Power of Attorney, can be registered with the Sub-Registrar of Deeds. However, the document does not mention a transaction amount. Therefore only a minimal stamp

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<sup>43</sup>An article in the Hindustan Times (10/13/89) in describing the problems of the leasehold system notes, "One serious manifestation ... has been the emergence of the system of power of attorney. This system has been so well perfected by real estate agents that it has become fool-proof from the viewpoint of law".

<sup>44</sup>Moore (1978) explains that when people are faced by the prospect of gain, they act to exploit "open areas" to achieve that gain. Moore notes, "[P]eople arrange their immediate situations ... by exploiting the indeterminacies in the situation ... or by reinterpreting or redefining the rules or relationships. They use whatever areas there are of inconsistency, contradiction, conflict, ambiguity, or open areas ... to achieve immediate situational ends." (Moore, 1978: 50).

duty of Rs. 11 is required for registration (Agrawal, 1993). The Sales Agreement is signed between the third party who holds the General Power of Attorney, and the buyer of the property. The Sales Agreement does not require registration according to Indian law, and states the transaction amount. The transaction amount stated in the Sales Agreement is usually grossly under-reported.<sup>45</sup>

The percentage of "black" money involved in power of attorney transactions tends to be quite high. In one power of attorney transaction for a leasehold flat, the buyer paid to the seller 39.1% of the agreed upon sales price in the form of cash. This amount was unrecorded in the transaction. The seller, a speculative investor, did not even live in Delhi. The DDA flat was sold immediately after allotment to the seller, at 250% of its allotment price. Percentages are based on sales transaction figures quoted by a power of attorney holder I interviewed. The allotment price to the seller for the 1200 sq. ft. DDA flat was Rs. 225, 000. The buyer paid a total of Rs. 600,000 for the flat in 1988, of which Rs. 575,000 was paid to the seller. Of the amount paid to the seller, Rs. 350,000 was recorded as the official sales price, with an additional 225,000 paid in "black". Brokerage costs, and lawyer's fees for the preparation of the GPA, accounted for the remaining Rs. 25,000.

The buyer had gone to different brokers before selecting to buy the particular flat. He had expressed no special preference for the particular leasehold flat. Most DDA flats tend to be standardized and the rates paid by buyers tend to conform to the rates and procedures of a well-established parallel market. Property brokers supply free information to housing allottees in an attempt to induce them to sell. Brokers have access to allotment lists from sources in the DDA. Letters from brokers are received by allottees even before they received official letters of allotment from the DDA. Allottees are informed of the prevailing "going-rate" that representative properties fetch on the parallel market, and the premiums on the allotment price that can be earned

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<sup>45</sup>In referring to transactions of leasehold properties, an article in the Hindustan Times (10/13/89) notes, "Almost invariably the prices are under-valued in the deals. Some glaring cases of under-valuation of properties of large values have attracted action by income-tax authorities, leading to subsequent actions. But in numerous cases, the under-valuation prevails".



(Benjamin, 1993). This particular transaction then, can be understood to be representative of the leasehold market in general, in terms of the proportion of declared and undeclared incomes and fees involved in such transactions.

A newspaper article notes in March 1993 that "nearly 90 percent of leasehold properties change hands by adopting the Power of Attorney route" (Economic Times, 3/14/93). It is necessary to examine the power of attorney transaction to understand why these transfers continue to be so widely used. Given that the power of attorney does not give the buyer formal title to property, it is not clear why this mechanism is used in preference to other possible irregular methods of transfer.

The power of attorney over time, has evolved into a lengthy and elaborate document, to protect the buyer from any attempt by the seller to reclaim transferred property. A number of different clauses referring to the nature of transfer were included in the document to make it for all practical purposes irrevocable. Property was transferred to multiple members of a family, "gifted" and "willed" to the buyer, and so on. If the power of attorney was contested in court by the seller, or lease administration, the resulting lengthy and drawn out legal process would ensure that no final legal decision would be seen in the contesting parties' lifetimes. The multiple clauses then, ensured the legal defensibility of the power of attorney in court. Buyers therefore did not fear that sellers would attempt to reestablish legal claim to property transferred on the power of attorney.

How does the power of attorney give the buyer legally defensible right? A buyer is likely to face two kinds of threat. One, from the lease administration. Two, from the seller, if he or she is an original lessee, and by government law retains legal title to property. A distinction must be made here between the law of government that I refer to as government law, and the law of the courts, which I refer to as juridical law, to understand how the buyer enjoys legally defensible right to property.

While both the General Power of Attorney and the Sales Agreement are legal documents according to government law, the power of attorney, which comprises of these two documents and effects the transfer of property is illegal

by government law. However, according to juridical law, the power of attorney is fully legal, for its two component documents are fully legal documents. For juridical law to consider the power of attorney illegal, lease administration needs to contest the legality of the power of attorney. For this contestation to take place, the administration needs to establish to juridical law that the General Power of Attorney has been used in combination with the Sales Agreement in a sales transfer of lease property, and as a result breaks government law. Detection and proof of such a transaction is difficult for lease administration even if was motivated to do so. Such contestation has in fact never taken place (Agrawal, 1994). As there has so far been no precedent of a challenge to its legality, this mechanism continues to be acceptable to juridical law.

In the case of competing claims between residents, only the original lessee can demonstrate greater claim to title than the power of attorney holder. Though the original lessee continues to have legal title, he or she cannot force the eviction of the lessee for such a decision has to be made by juridical law. According to Indian juridical law, physical possession is considered "three-fourth title". Residents who have acquired property through the power of attorney also make sure that the original documents to title are handed over with the property sale. Original lessees do not contest the power of attorney, because in the first place it involves a breach of trust. Second the original lessee no longer has the documents to title in his or her possession once the sale has taken place. Third, any such contestation as pointed out earlier, is unlikely to be decided within his or her lifetime. Fourth, as the buyer keeps dated records of physical possession such as electricity bills, telephone connection, registered letters addressed to the buyer at the address, he or she is easily able to establish physical possession. A decision even if taken, is under such circumstances very unlikely to be decided in the original lessees favor by Indian juridical law. Fifth, in the case of such a property dispute, the lease administration, as the lessor, is automatically notified by the court about the circumstances of the dispute. The original lessee has no wish to invite the attention of the lease administration, for he or she is directly implicated in the irregular power of attorney transaction with not having paid lease administration the unearned increase at the time of the property sale (Agrawal, 1994).

As noted earlier, official title does not pass to the buyer in a power of attorney transaction. The property transaction therefore, is not recognized as a legal transfer of leasehold rights. De jure title to ownership therefore remains with the original lessee, though de facto right rests with the buyer through the power of attorney. For leasehold residents, de facto right to ownership established by the power of attorney is equivalent to the de jure right to title offered by the freehold conversion option. Residents therefore find no additional tenure security by regularizing the power of attorney transfer. However, the lack of de jure title imposed by the use of the power of attorney in fact offers significant economic advantage to both buyers and sellers.

## CONCLUSION

Residents who chose not to convert to freehold ownership, appear motivated by three primary reasons. One, total direct and indirect costs of conversion are considered excessive. Residents expressed initial interest in the freehold conversion scheme because they anticipated that freehold conversion would be granted to them for a nominal charge. However, when confronted with the total direct and indirect costs of conversion, they chose not to convert to freehold tenure. The government's attempt to enforce compulsory conversion was immediately contested, for the majority of lessees do not see immediate benefit in the freehold conversion scheme. Though few residents have chosen to convert to freehold tenure, they still sought an indefinite extension of the deadline for conversion. Residents do not want to restrict their future option to convert to freehold ownership at a later date, even though they find freehold conversion at the present time not justified by the immediate advantages it brings.

Two, lessees are not insecure about tenure, and find no need for the additional tenure rights offered by freehold ownership. Lessees already enjoy de facto rights that the government attempts to transfer to them through freehold ownership. These de facto rights are largely the result of the administration's poor enforcement of lease restrictions.<sup>46</sup> The administration's poor record of enforcement are the result of the strong bias of Indian juridical law in favor of residents, and strong political compulsions. Leasehold residents have tended to infringe government law by non-

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<sup>46</sup>While the lease contract assigns lease administration the authority to 'determine' a lease if lease conditions are not met, that provision is rarely exercised (Krishna Rao, 1993).

compliance to lease conditions. The lease administration has largely relied on occasions when residents seek permits, to try to recover past unpaid dues, and to levy penalties for non-compliance to the lease contract. Some residents therefore, express reluctance to invite the attention of the government to such past transgressions by applying for freehold conversion. However, the power of the administration to enforce even the payment of past dues is limited. If residents do not pay lease dues, the administration can take deviants to court under the Public Money Recovery Act, but residents can easily obtain an injunction or "stay" to avoid the necessity of paying such dues. The lease administration therefore rarely follows up on the recovery of dues by taking transgressors to court (Agrawal, 1994). As a result, the urban administration has only one effective deterrent, the ability to deny applicants permission for the clearance they have applied for. Residents, who therefore do not expect to be given such clearance for non-payment of past dues, and are unwilling to pay the appropriate compensation to the administration, just do not apply for such permits. This may explain why some residents do not come forward to apply for freehold conversion.

Three and most important, the power of attorney gives residents a mechanism sanctified by juridical law, allowing them to maximize immediate economic profit by irregular transactions, with no fear of punitive action from the government. Defensible right to property becomes most important at times of economic and intergenerational transfer of property. In the past, most applications for permits to the urban administration, have been for the mutation of property (Agrawal, 1994). Though the power of attorney transfer does not give buyers legal title, the two components of the power of attorney are fully legal and recognized by both government and juridical law. Buyers appear not to fear action by the government. They are able however, to defend their right to property in a court of law from other claimants. Buyers therefore are guaranteed de facto title to property, that is equivalent to freehold ownership, for they fear no threat of eviction from the government. This lack of fear is encouraged by the bias of Indian juridical law in favor of residents, and the legal precedent set by the lack of challenge to the power of attorney.

The government introduced the leasehold system in New Delhi largely to achieve control over speculative interests. A primary reason for the ineffectiveness of the leasehold system in New Delhi is the result of widespread irregular transactions through the power of attorney. The perceived failures of the leasehold system to control speculative investment therefore, can be attributed to the gap in law that does not require that the power of attorney transfer be registered. Given that few residents have chosen to convert to freehold tenure, it appears that the government must continue to maintain a large part of its leasehold system. If the government wishes to better administer its leasehold system, some rationalization is required in the framing of lease restrictions.

First, the determination of unearned increase and ground rent must be based on a more rational system.<sup>47</sup> Second, the blanket restriction on the resale of leasehold property allotments for ten years appears to be a misplaced form of intervention. Most speculative resales of leasehold property occur before the property is actually occupied by the allottee, and restrictions on resale for more than a period of one year appear pointless to attempt to enforce. Third, lease restrictions on land use create "dual control", and an unnecessary jurisdictional overlap with the regulatory authority of the municipal corporations. Fourth, and most immediately, the legal loophole provided by the power of attorney transaction then, must be closed to force the regularization of property transactions. As the most important of the four components of regulatory reform, I focus largely on the process required to ensure the registration of the power of attorney transaction.

The continued use of the power of attorney has serious negative implications for the goals of the State. Most mundanely, and probably most importantly,

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<sup>47</sup>A possible reason some residents used the power of attorney is because administration used arbitrary methods in determining land rates in the eighties. Lacking accurate information on market rates of land, urban administration decided that land rates increased at 20% per annum during the late eighties (Agrawal, 1994). Unearned increase, which was determined on the basis of the government's determination of land rates, were increased every year, bearing little relation to actual market rates. Agrawal believes that government determined land rates were much higher than prevailing market rates and as a result had an inflationary effect on prevailing land rates.

power of attorney sales do not require registration, so the government has no means of tracking the working of the land market. The lack of any reliable information means that policy intervention on land or housing may be misdirected. Further, property transactions have historically been a convenient source of speculative investment. This has occurred for two reasons: one irregular transactions enable the use of undeclared or "black" income in property transactions. Two, Land is a non-producible commodity, and there are gains to be made by withholding it from the market. Speculative withholding of land from the market may create supply shortfalls, which result in increasing housing costs. While such speculative investment may ensure greater economic benefit to a select few, it makes housing more inaccessible to the majority under circumstances of acute housing shortages.

As discussed earlier, the use of the power of attorney offers significant economic advantage to both buyers and sellers over regular sales transactions. The buyer finds that by using the power of attorney, the payment of stamp duties and registration charges levied on sales transactions can be avoided. In addition, the use of the power of attorney facilitates the use of undeclared income or "black" money in these irregular transactions. Since the Sales Agreement is not related to a regular property transaction, urban administration is unable to check whether these power of attorney transactions are under-reported. The buyer is then able to use undeclared income in such a transaction without risk of detection by the income tax department.<sup>48</sup> The seller finds that by using the power of attorney, the payment of unearned increase can be avoided. In addition, sellers also benefit from a reduced capital gains tax on the under-reported sales price.<sup>49</sup> As long

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<sup>48</sup>An article in the The Times of India (3/14/91) interviews property dealers on their perception of how leasehold residents would respond to the newly introduced tenure conversion scheme. In reference to the inclusion allowing conversion of property transferred on the power of attorney, the article quotes a property dealer as saying, "People would do so [apply for conversion] only if submission of income-tax certificates was not required". The press article goes on to say, "Terming it a major flaw, [he] said no person would come forward otherwise."

<sup>49</sup>The capital gains tax is levied on total income reported, therefore tax on income earned through such transactions is levied through a progressive income tax slab. Agrawal (1993),

as the power of attorney transaction does not require the registration of transactions, and remains a legal option, property owners have little incentive to regularize sales transactions.

Certain modifications in existing legislation will need to be introduced to ensure that the power of attorney is not used for irregular sales transactions. Property transfers in India are regulated by the Transfer of Property Act. The act regulates property transfers, including ways of transferring immovable property, such as the sale and gifting of property. Transfers mentioned in this act are deemed legal, and require registration with the Sub-Registrar of Deeds. Transfer through the power of attorney, however, is absent from the list of transfers mentioned in the Transfer of Property Act. It is because of this exclusion that the power of attorney invites no registration charges.

To prevent irregular transfers through the General Power of Attorney, a modification to the Transfer of Property Act is required. It is necessary for a clause to be inserted in the Transfer of Property Act listing the power of attorney transfer among the registrable forms of sales transfer. This automatically ensures that such transactions require registration with the Sub-Registrar of Deeds. It will be necessary to ensure that a distinction is made between the General Power of Attorney and the power of attorney transaction, to ensure that the General Power of Attorney does not invite registration costs for its originally intended use to effect transfer of authority.

A proposal suggesting the compulsory registration of the power of attorney transfer is presently under consideration by the government. A report in the Times of India (12/5/92) refers to a statement by the Minister of State for urban development confirming that such a proposal is being reviewed. Such a proposal may not be easy to legislate. Banerji (1993), notes that there is considerable opposition to the proposal even within urban administration. Those opposing the move claim that requiring the compulsory registration of the power of attorney would be like "throwing the baby out with the bathwater" (Banerji, 1993). They claim that the legitimate use of the General Power of Attorney would be severely compromised, where it is to be used for

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notes that a representative leasehold property transaction pushes the seller into a 45% income tax bracket.



its originally intended purpose to effect a transfer of authority. They point out that such a move would generate considerable opposition from residents and would find little sympathy from the judges of the high court, who may "stay" such legislation if, as is only to be expected, residents choose to contest such regulation through due legal process.<sup>50</sup>

The following steps must be taken to close the loophole provided by the power of attorney. Two possible routes are open. One, regulation that requires that power of attorney be granted for only a fixed period of a year, that is subsequently renewable. This is expected to ensure that sales transfers of leasehold property on the power of attorney will not take place, as renewal will only be granted when an official responsible for such renewal is convinced that the General Power of Attorney is used legitimately.<sup>51</sup> However, such a decision creates discretionary power by making it necessary for subjective decisions to be taken about when the power of attorney is used legitimately and when not, that only adds on another "level of governance", at a time where administration appears eager to de-bureaucratize itself. Critics of such a move within the administration claim that the creation of this additional administrative level is a retrograde step that is inappropriate to the government's present goal of divesting control, and minimizing regulatory intervention in the housing market (Agrawal, 1994).

Two, a modification needs to be made to the Transfer of Property Act, as outlined earlier, listing the power of attorney transaction as a legally

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<sup>50</sup>A "stay" or injunction, is a temporary freeze on the implementation of government law that is under dispute for normative reasons. A court of law hearing such a case may in some cases where there appears to be sufficient justification, grant a stay until it takes a decision on the appropriateness of such law. The granting of a stay is in itself a minor moral victory for the party requesting the stay. Pankaj Agrawal Director (Lands) notes that residents had requested the high court for a stay on the tenure conversion scheme, but considers it a partial vindication of the government's position that it was not granted.

<sup>51</sup>"Legitimate" uses of the General Power of Attorney include transfer of authority in cases where property is under legal dispute, and the owner of property is unable for reasons of illness or temporary absence to personally appear in court. Users of the General Power of Attorney include owners of property temporarily resident abroad (non-resident Indians) who designate local individuals to represent their interests. Other permitted usage of the General Power of Attorney includes use by women who own property, who for social or religious reasons (such as the "purdah", for Muslim women), do not appear in court.

recognized method of transfer. As I have pointed out, such an inclusion automatically makes the registration of such sales transfers mandatory. It is of course imperative that the Transfer of Property Act clearly indicate that the power of attorney is a "package", that comprises the General Power of Attorney in combination with the Sales Agreement. The registration of the General Power of Attorney if used by itself, will then not be required. Modifying the Transfer of Property Act to include the power of attorney transfer clearly involves better directed legislation and is the more logical route to take.

The introduction of either of these regulations requires a modification to an act that has been passed by Parliament. Such a modification is referred to as a "simple amendment" to law. The procedure for a simple amendment of law is mandated by the Indian Constitution. Four ministries are required to agree to the appropriateness of such an amendment. In this case, where the move would be initiated by the Ministry of Urban Development (MUD), three additional and related ministries would be required to support the request for the amendment. These ministries are that of Finance, Home and Law. MUD is required to make a case for presentation to these ministries that establishes that the amendment is required because of a "legal lacuna", i.e., that the law itself is faulty or imprecise, as opposed to an ineffectiveness of law because of poor implementation. Following such consensus, a Cabinet note is prepared. Subsequent to its approval by the Indian Cabinet, the Parliament is required to vote to approve the amendment.

Such regulation then, is obviously difficult to implement. Further, none of the actors in this lengthy and drawn out process are disinterested actors, as they may either hold property through the power of attorney in Delhi, or may be open to pressure from close associates who do (Agrawal, 1994). However, this does not by any means imply that the government will be unable to implement such law. The process of legislation itself generates a degree of autonomy in the abstract framing of a question, that to an extent enables actors to make decisions that do not correspond to immediate material gain. That degree of autonomy may be related to how clearly the choices are presented to such actors, and how well they understand the implications of their decisions.

## Epilogue

### A THEORY OF LAW AND CONFLICT: WHY FORMAL LEGITIMACY IS IMPORTANT THOUGH RESIDENTS APPEAR IMMUNE TO DETERRENCE

This story has pointed to a series of apparent paradoxes. Residents demanded that the government allow conversion of leasehold residential property to freehold ownership. However, when the government introduced the leasehold to freehold conversion scheme, few residents chose to convert to freehold ownership. When confronted with the costs of conversion to freehold tenure, residents chose not to do so. However, they actively lobbied for the extension of the government's deadline for conversion. Residents ignore most leasehold restrictions as the government appears unable to enforce such law. While residents openly break government law through unauthorized construction and the non-payment of lease dues, they subvert lease restrictions on sales by using the power of attorney that is defensible in a court of law. To understand this apparently contradictory behavior, it is important to look more closely at the role of government law where non-compliance is the norm.

I recommended in this thesis that the registration of the power of attorney be mandated by law to prevent its use for irregular sales transactions. Given the record of non-compliance to land regulation in New Delhi, the effectiveness of further legislation could be questioned. Where the state is unable to enforce compliance as a result of the failure of its deterrence mechanism, it is not clear what purpose government law serves. Under what conditions then, is further land regulation appropriate, if urban administration is unable to enforce such law?

Two theoretical approaches typically explain why people do not obey law. The instrumental approach assumes that individuals are motivated to non-compliance as a result of their assessment of the threat of deterrence in comparison to the benefits they achieve from deviance.<sup>52</sup> In contrast, a normative approach focuses on non-compliance as a result of public dispute over the morality and legitimacy of law. Research on the effectiveness of law has tended to adopt the instrumental view to explain such deviance. As the history of non-compliance to lease restrictions in New Delhi indicates, law may be difficult to enforce for certain reasons.

One, law enforcement does not have the ability and resources to detect deviance. Lease administration has not demonstrated the ability to enforce restrictions on the non-payment of lease rents or on unauthorized construction and extensions to leasehold property. Further, the widespread under-reporting of sales prices in property transactions in both leasehold and freehold submarkets has so far been beyond urban administration's ability to detect and enforce.

Two, political compulsions make the enforcement of law unfeasible, or undermine the autonomy of the law making process. MUD has checked its enforcement agencies from punitive action in response to unauthorized construction in residential areas prior to elections by issuing bans on such checks (Krishna Rao, 1993). These bans have tended to stay in place even in the period separating elections. Such bans appear to stem from urban administration's unwillingness to alienate voters by enforcing politically unpopular legislation. Urban administration's unwillingness to raise ground rents in the older leaseholds also appears to be motivated by political exigency.

Three, due legal process itself may frustrate government's attempt to enforce law. Residents question the legitimacy of the government's role as "landlord", with regard to government's decision to retain private land in

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<sup>52</sup>I use the term 'deterrence' to mean enforcement of government law or 'formal' law. 'Deviance' is used here to describe non-compliance to formal law.

public ownership through leasehold tenure. They also question the morality of regulation that restricts their freedom to benefit from their own property through the use of lease restrictions. When land law is disputed in normative terms, organized residents can pit law and governance against each other.<sup>53</sup> In the case of New Delhi, lease restrictions have been difficult to enforce for all of the above three instrumental reasons.

Residents, however, also question in normative terms the legitimacy and morality of the government's withholding of property rights through lease restrictions, such as the right to transfer leasehold property. Though they found little reason to convert immediately to freehold tenure and proved they could not be coerced to do so, the right to that option was demanded for normative reasons. How can such behavior be explained?

A sharp distinction between instrumental and normative motivations as underlying compliance or non-compliance to law, however, does not capture the finer aspects of the behavior of people. Nor does it explain the apparent contradiction in questioning normatively, law that is rarely enforced. The answer to this paradox must lie in the dynamism of the evolution and shaping of law.. Other theoretical readings describe the dynamic process of the evolution and change of law and the action of the state in reaction to peoples' responses. I introduce these readings into this analysis to illustrate some aspects of the relationship between people and the state, in order to evolve my own analysis of the role of formal law under circumstances where the enforcement of formal law is for various reasons difficult.

According to Moore (1978), formal law that restricts the enjoyment of particular rights by certain individuals in society may result in these individuals grouping to contest such regulation. Such organized groupings

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<sup>53</sup>In suggesting revisions to the method of determining ground rents, a government document notes, "Today a large number of the revisions made end up in the law courts because of arguments about land value, and there is untold pressure on officials to reduce their estimates, pressure that can not always be effectively resisted" (Government of India, 1977: 12).

she terms "social fields".<sup>54</sup> Social fields then, are generated by conflict.<sup>55</sup> As social fields are ordered by a set of codes or conventions requiring conformance, they function as a "legal system", even though conformance to these codes involves deviance from formal law.<sup>56</sup> Such contestation may cause governance to reconsider the formulation of law because of the failure of its ability to enforce compliance. Razzaz (1991) shows the transformation of conflict between formal and non-formal legal systems from a vertical or hierarchical relationship to a horizontal or non-hierarchical relationship as a result of the formation of a social field. The ability of the social field to ensure immunity from deterrence is achieved by the "semi-autonomy" of the social field (Moore, 1978). A semi-autonomous social field generates rules and customs internally, but is able to effect its purposes by exploiting the permeability of authority external to it. The semi-autonomous social field exerts pressure on the state through the use of the formal legal system, and through the manipulation of political interests. Conflicting claims between state and social field then, are gradually transformed from hierarchical or "vertical" conflict, into conflict that is non-hierarchical or "horizontal". Such

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<sup>54</sup>When groups through their organizational arrangements, networks, procedures, and practices, pose a challenge to the enforcement of law, and cause authority to reconsider its formulation, they become a "social field". As Razzaz (1991: 8) notes, "Groups organizing to protest a certain law, an agency, or a policy can be said to be part of a social movement. They aim to put pressure on the state to introduce, change, or retain elements of governance. But a social field is more than a movement. Not only can it protest existing rules and regulations, but it can provide forms of relief from these rules and regulations. Such relief comes in the form of non-compliance mechanisms and / or alternative rules and regulations."

<sup>55</sup>The relationship of state to society, and among individuals within society, can be described by one of conflict. I use conflict here to refer to competing property claims. Bromley (1991: 2) defines property relations as social relationships that define the property holder "with respect to something of value ... against all others". Property right is defined by Macpherson (1978) as claim to use or benefit, that is "enforced by state, by custom or convention or law" (Macpherson, 1978: 3). As Razzaz (1993: 341) points out, property relations need not always be protected by legal rights. In the residential leasehold of New Delhi, residents enjoy *de facto* rights which are not given to them by government law, such as the right to transfer property.

<sup>56</sup>"Legal pluralism" is a view of law that does not imply all-encompassing law, but one "operating within a plurality of ordering mechanisms" (Razzaz, 1991: 4). The framework of legal pluralism assumes that individuals interact with governmental law as organized social groupings capable of generating their own codes of conformance that "complement or undermine governmental law" (Razzaz, 1991: 4).

transformation occurs unless the state shows a continuing willingness and ability to repress deviance.

I term conflict between state and social field intersystemic conflict. As social fields are ordered by a set of codes or conventions requiring conformance, they function as a "legal system". Conflict between state and social field, can be seen as conflict between distinct legal systems. Intersystemic conflict is used then, to describe conflict between legal systems.

Such a reading is useful to understanding the nature of property conflicts in New Delhi. New Delhi's residential leasehold may be seen as a social field. In New Delhi's residential leasehold, an organized network of residents and property dealers create a problem for law enforcement through non-conformance and the development of alternative codes. An organized network is revealed where residents collaborated with brokers, real estate agents and lawyers to evolve the power of attorney transaction. One non-formal code is that allowing transacting parties the use of undeclared incomes in property transactions to their mutual benefit. Another non-formal convention is revealed where lease administration created a problem for transacting parties by the time it took to process permission for the transfer of leasehold rights. A non-formal convention allows the buyer to retain a certain proportion of the transaction amount until such permission, requested by the buyer in the name of the seller, is received. Other indications of the operation of an organized non-formal network include the supply of free information by brokers to allottees of DDA built leasehold housing on prevailing market rates for comparable housing. Brokers attempt to induce allottees to sell their housing allotments at the prevailing premium, hoping to pick up a commission from brokering such a transaction. In such instances, allottees often receive such letters from brokers even before they receive official allotment letters from DDA. Brokers obtain for a price the names and addresses of allottees from sources within DDA.

Governmental intervention in the housing market was subverted by non-compliance to lease restrictions by organized residents. By the subversion of such restrictions, the social field of the residential leasehold made the government reformulate regulation portrayed by the residents as repressive.

The semi-autonomy of the social field is evident in its use of political pressure to force the government to introduce the freehold conversion scheme. Residents also appear fully aware that the state cannot easily enforce infringements to land law. In the case of unauthorized extensions and construction to leasehold property, residents ignore lease restrictions knowing that lease administration is rarely in a position to enforce such regulation. When residents realized that there was inadequate economic incentive in conversion, they refused again to be coerced by law. This time, due legal process was used to contest the implementation of law.

With such an understanding, the apparent contradiction displayed by the response of residents to law that they cannot be coerced into obeying, may now be better understood. It was pointed earlier, that while lease administration's inability to enforce lease restrictions causes an instrumental problem as evidenced by the failure of its deterrence mechanism, such restrictions are represented by residents in normative terms. Such representation serves a purpose. When the social field is able to justify non-compliance in normative terms, it appears that the formal legal system and political actors begin to support such non-compliance. Housing is often perceived as a fundamental right, even if not guaranteed by the letter of the law. As a result, such property conflicts where the right of individuals to housing is disputed by the state are easier to portray in normative terms.

In the case of New Delhi, some issues portrayed in normative terms were misrepresented. Residents, for example, claimed that the conversion scheme for the first time legitimized the power of attorney transaction. As noted in Chapter 4, two earlier schemes had already offered residents the option to regularize irregular power of attorney transactions. Residents appear not to have responded to these two earlier schemes and the third and most recent option that also allowed them the simultaneous option to convert their properties to freehold tenure. As already pointed out, their lack of interest appears to stem from two primarily instrumental reasons. First, the power of attorney allows them fully defensible right to property, while ensuring them additional additional economic advantage over regular sales transactions.



Second, most residents find the total direct and indirect costs of conversion to freehold tenure not justified by the advantages that it brings.<sup>57</sup>

As a result of the organization of individuals into a social field with its own operative codes, conflict between government law and the non-formal legal system transforms over time from hierarchical or vertical conflict into a non-hierarchical or horizontal relationship. Such transformation implies that formal legitimacy should be superfluous. However, in the case of New Delhi, at least 90 percent of leasehold properties change hands through the power of attorney.<sup>58</sup> Nearly all irregular leasehold property transfers, therefore are conducted within the domain of formal law. While leasehold residents chose to break the law by not paying ground rents, and ignored lease restrictions on unauthorized construction, they chose to devise a route defensible in a court of law for the transfer of leasehold rights.

When is government law then, important?

It is necessary to differentiate between conflicts among legal systems from that internal to a legal system to explain why mechanisms that are supportable by formal law are important to deviance in the case of New Delhi. A reading that represents social fields as homogeneous entities ignores a second kind of conflict, that between the individuals who form the social field. It was noted in Chapter 3 that competing property claims between residents of New Delhi's residential leasehold are common.<sup>59</sup> Formal law then, can and does,

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<sup>57</sup>Roy (1993), relates the response to the conversion scheme to the state of the real estate market. The implication is that freehold conversion increases economic value of property to the buyer when transfer of property takes place. Property brokers note that in many cases where freehold conversion is sought, it is the buyer who files the application for conversion after acquiring the property. An article in the Economic Times (9/13/92), reports a temporary slump in New Delhi's real estate market. This may partially explain why applications for conversion are so low.

<sup>58</sup>Gambhir (1993), claims 99.9% of all leasehold transfers take place through the power of attorney.

<sup>59</sup>Moore (1978: 55) notes, "The semi-autonomous social field has rule making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix

affect and invade the social field at the invitation of the individuals that comprise it. These individuals in New Delhi contest their rights to property in the domain of formal law. This domain is represented by the municipal courts. I have said that the need for legality shown in the use of the power of attorney transfer anticipates such conflict.

I use the term intrasystemic conflict to describe such conflict within a legal system. I use intrasystemic conflict here to refer to conflict within the non-formal legal system of the social field. Such a reading may enable an understanding of the need for formal legitimacy when for all practical purposes residents are immune to deterrence.

When are individuals vulnerable to intrasystemic conflict?

Black (1976: 6) indicates that as social control loosens, the need for formal law increases. Where, as in the resettlement colonies, residents are relatively homogeneous in terms of ethnicity, a strong level of social cohesion is visible. However, as shown in Chapter 3, this cohesion shows signs of weakening, as intergenerational transfer of property occurs and people's attitudes about social relations change.

One leasehold resident noted that his parents had considered conversion to freehold tenure to ease and render unambiguous intergenerational transfer. After considering the costs and benefits of the move, they had decided not to convert to freehold ownership. The interviewed lessee was an only son. That he would face no competing claim to his father's property may have played some part in that decision.

At times of transfer of property, then, enforceable claim to property acquires particular importance. Where the state can be manipulated to provide that enforceable claim, there appears to be no need for non-formal enforcement mechanisms. Such seems to be the case in New Delhi.

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which can and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance".

Enforceable right or legal claim to property, may have other value. In the case of an economic property transaction between individuals, such defensible right is a valuable benefit to the buyer. The widespread use of the power of attorney for property transfers indicates the preference that residents have for mechanisms supportable by formal law.

Conflicts between individuals unrelated to intergenerational transfer or economic transactions may also occur, that requires resolution outside of the non-formal legal system. Non-formal legal systems need not always be 'just' or 'neutral'. In most cases of intrasystemic conflicts, some individuals are inherently or by familiarity, endowed with greater advantage over others by existing networks of control. The less privileged, then, may not receive a 'fair' hearing by a non-formal legal system.

Residents chose not to convert to freehold tenure when confronted with the costs of regularizing ownership. As long as the power of attorney protects individuals from intrasystemic conflict by allowing access to the courts of law, a large proportion of property transactions will continue to be irregular. As a study of the power of attorney reveals, formal legitimacy is of critical importance to support irregular property transfers. It is to intrasystemic conflict that the modifications to the General Power of Attorney appears addressed, and it is to the insecurity caused by such conflict that law and governance must direct attention towards, to prevent deviance from land regulation.

## Bibliography

### BOOKS

Archer, R. W. 1973. Leasehold and Freehold Urban Land Systems, Metropolitan Research Trust, Canberra.

Black, Donald. 1976. The Behavior of Law, Yale University, New Haven.

Macpherson, C. B. 1978. "Liberal Democracy and Property," in C.B. Macpherson (ed.) Property: Mainstream and Critical Positions, Oxford: Basil Blackwell.

Moore, S. F. 1978. Law as Process, Routledge & Kegan Paul, London.

Tyler, Tom R. 1990. Why People Obey the Law, Yale University.

### JOURNAL ARTICLES

Capozza, Dennis R., and Sick, Gordon A. 1991. "Valuing Long Term Leases: The Option to Redevelop", in Journal of Real Estate Finance and Economics, 4: 209-223.

Howland, Marie, 1975. "Delhi's Large Scale Land Acquisition, Development and Disposal Policy - An Appraisal", in Urban and Rural Planning Thought, (January), School of Planning and Architecture, New Delhi.

Jha, 1984. "Revolving Funds as a Technique of Land Development", in Nagarlok, (October).

Kumar, Arun. 1989. "National Housing Policy: The Implications", in Economic and Political Weekly, 10 (June).

Maitra, Sipra. 1991. "Housing in Delhi: DDA's Controversial Role", in Economic and Political Weekly, 16 (February): 344-6.

Razzaz, Omar M. 1993. "Examining Property Rights and Investment in Informal Settlements: The Case of Jordan, " in Land Economics, (November) 69(4): 341-55.

Ribiero, E.F.N. 1988. "Urban Land Policies and the Delhi Development Plan", in Urban India, vol. VIII, no.1 (January-June): 56-73.

## NEWSPAPERS

Basu, Somnath, 13 September, 1992. "Investment trends in a slump", in Economic Times, New Delhi.

Hindustan Times, New Delhi Edition.

\_\_\_\_\_, 15 March, 1991. "Power of attorney sales legitimised".

\_\_\_\_\_, 13 October, 1989. "Leasing a promise".

\_\_\_\_\_, 17 February, 1992. "From lease set free".

\_\_\_\_\_, 27 February, 1992. "Free-for-all at meet on leasehold conversion".

\_\_\_\_\_, 3 March, 1993. "Conversion into freehold optional".

\_\_\_\_\_, 10 March, 1993. "HC directive on land conversion".

Indian Express, New Delhi Edition.

\_\_\_\_\_, 6 December, 1987. "Leasehold land conversion mooted".

\_\_\_\_\_, 13 March, 1991. "Conversion of properties in Capital".

\_\_\_\_\_, 11 April, 1991. "Double benefit for flat owners", New Delhi.

\_\_\_\_\_, 26 February, 1992. "Anomalies in land conversion scheme".

Khungar, G.P., 14 March, 1993. "There's little incentive to change land tenure", in Economic Times, New Delhi.

\_\_\_\_\_, 18 July, 1993. "DDA's inaction lets precious land go waste", in Economic Times, New Delhi.

The Patriot, New Delhi Edition.

\_\_\_\_\_, 15 February, 1992. "Leasehold system done away with".

\_\_\_\_\_, 15 February, 1992. "DDA to make clean 600 cr".

\_\_\_\_\_, 17 February, 1992. "End of an Anomaly", Editorial.

\_\_\_\_\_, 18 February, 1992. "Lease abolition a fraud: BJP".

\_\_\_\_\_, 27 February, 1992. "Lease to freehold," Letter to the Editor.

\_\_\_\_\_, 24 July, 1992. "Delhi in Parliament,".

Shah, Kalpana. 1992. "Few takers yet for Delhi's freehold scheme", in Economic Times, 28 (June).

Sharma, Gopal. 1992. "Leasehold conversion shunned", in Statesman, 6 (November).

Shourie, H.D. 1992. "Lease-hold: Conversion with snags", in Hindustan Times, 21 (February).

Statesman, New Delhi Edition.

\_\_\_\_\_, 21 February, 1992. "Amendment of order on leasehold property likely".

Times of India, New Delhi Edition.

\_\_\_\_\_, 13 March, 1991. "Good For Delhi".

\_\_\_\_\_, 14 March 1991. "Hard on plots, plus for flats", New Delhi.

\_\_\_\_\_, 11 January 1992. "Ministers reminded of promise", New Delhi.

\_\_\_\_\_, 18 February 1992. "BJP plea to modify conversion rates".

\_\_\_\_\_, 28 February 1992. "Conversion rates to be static till March '93".

\_\_\_\_\_, 5 December, 1992. "Properties".

Tribune, New Delhi Edition.

\_\_\_\_\_, 17 February, 1992. "Leasehold to Freehold", New Delhi.

Wig, A.R. 1992. "Drawbacks in Lease System" in Hindustan Times, 23 (February).

#### THESES, LECTURES, AND OTHER UNPUBLISHED WORKS

Bose, Ashish, 1968. "Land Speculation in Urban Delhi" (National Building Organization Lectures, July, 1968).

Kumar, Sanjay, and Srinivas, Sangita, 1988. "Urban Transformation in Lajpatnagar", Term Project, Master of Urban Design Program, School of Planning and Architecture, New Delhi.

Mehra, Manoj, 1986. "Land Management Policies and its Effects on the Housing Situation in Delhi", Masters Thesis, School of Planning and Architecture, Delhi.

Negi, Manika, 1990. "Trend in Residential Property Values and their Impact on Housing Development: Case Study - Delhi", Masters Thesis, Department of Housing, School of Planning and Architecture, Delhi.

Razzaz, Omar M., 1991. "Contestation and Mutual Adjustment: The Process of Controlling Land in Yajouz, Jordan", Department of Urban Studies and Planning, Massachusetts Institute of Technology, Cambridge, Massachusetts.

Selvasundar, B., 1989. "Filtering Process in Plotted Development for EWS Housing: Case Study of Rohini and Mangolpuri, Delhi", Masters Thesis, Department of Housing, School of Planning and Architecture, New Delhi.

#### PUBLIC DOCUMENTS

Government of India. Delhi Development Authority. 1993. Administrative Records.

Government of India. Ministry of Urban Development. Land and Development Office. 1992. Conversion from Leasehold into Freehold Brochure (Including Application Form). April.

Government of India. Ministry of Urban Development. Land and Development Office. 1977-93. Administrative Records.

Government of India. Ministry of Works and Housing. 1977. Report of the Committee on Administration of Land in Delhi.

Government of India. Town and Country Planning Organization. 1958. Paper on Urban Land Policy.

#### INTERVIEWS AND TELEPHONIC CONVERSATIONS

Agrawal, Pankaj. November-February, 1993-94. Director (Lands), Ministry of Urban Development.

Banerji, Ranjit. 8/17/93. Director, Delhi Division, Ministry of Urban Development.

Benjamin, Solomon. 7/28/93. Housing and Urban Development Corporation.  
-----, 7/29/93.

Gambhir, J.C. 7/30/93. Commissioner (Planning), Delhi Development Authority.

Kumar, Arun. 7/30/93. Professor of Economics, Jawaharlal Nehru University, New Delhi.

Krishna Rao, G.V. 8/12/93. Land and Development Officer, Land and Development Office, Ministry of Urban Development.

Ravindran, K.T. 8/10/93. Head, Department of Urban Design, School of Planning and Architecture, New Delhi.



Roy, Sudripto. 8/19/93. Commissioner (Lands Disposal), Delhi Development Authority.